

BRIGHTON CROSSINGS MASTER ASSOCIATION

NOTICE AND AGENDA OF SPECIAL MEETING

<u>DIRECTOR</u>	<u>APOINTED</u>
Lorrie McNamee	May 13, 2021
Matt Haley	May 13, 2021
VACANT	N/A

DATE: April 19, 2022 (Tuesday)

TIME: 4:30 P.M.

PLACE: Via Zoom

<https://us02web.zoom.us/j/83368987554?pwd=aTBWNjdROVR5eXlJdmd3VElQMm1DUT09>

This meeting is being held via telephone conference

Meeting ID: 833 6898 7554

Alternate 1-346-248-7799 PASSCODE ID: 997101

AGENDA

- I. ADMINISTRATIVE MATTERS**
- A. Call to Order.
 - B. Declaration of Quorum/Director Qualifications/Disclosure of any potential Conflicts of Interest.
 - C. Approval of Agenda. **(Page 1)**
 - D. Public Comment. Comments are limited to three (3) minutes per speaker.
- II. LEGAL MATTERS**
- A. Approval of Resolution of the Board of Directors Regarding Dissolution. **(Pages 2-44)**
- III. ADJOURNMENT**

**RESOLUTION
OF
THE BOARD OF DIRECTORS
OF
BRIGHTON CROSSING MASTER HOMEOWNERS ASSOCIATION, INC.**

RECITALS

WHEREAS, Carma Colorado, Inc., a Nevada corporation, created the Brighton Crossing community by recording that certain Master Declaration of Brighton Crossing (the “**Declaration**”) in the real property records of the Clerk and Recorder of Adams County, Colorado on December 13, 2002, at Reception Number C1067328; and

WHEREAS, Brighton Crossing Master Association, Inc. (the “**Association**”) was incorporated as a nonprofit corporation in the State of Colorado by the filing of the Articles of Incorporation of Brighton Crossing Master Association, Inc. (the “**Articles**”) on December 18, 2002, and is the community association named in the Declaration to manage and govern the Brighton Crossing community, as set forth in the Declaration; and

WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in the Declaration unless otherwise provided or defined herein; and

WHEREAS, the Articles provide that the Association may dissolved resolution of the Board of Directors approved by Members holding at least 80% of the votes in the Association, and that upon dissolution, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association is created; and

WHEREAS, pursuant to Article 4, Sections 4.4, 4.5, and 4.6 of the Declaration, the community is divided into Delegate Districts, and the Members within each Delegate District elect one Delegate to exercise the voting power of all the Members within that Delegate District; and

WHEREAS, the Board of Directors of the Association desires to recommend dissolution of the Association and approval of an Amended and Restated Master Declaration for Brighton Crossing which will amend the Declaration to place the Association’s functions related to covenant enforcement and design review with Brighton Crossing Metropolitan District Nos. 4-8, as to be assigned to the Brighton Crossings Authority.

NOW, THEREFORE, the Board of Directors of the Association hereby resolves as follows:

1. It is in the best interest of the Association to dissolve and for the Association's design review and covenant enforcement functions to be assigned to and consolidated into the Brighton Crossings Authority via an Amended and Restated Master Declaration for Brighton Crossing (collectively, the "**Dissolution**").

2. The Board of Directors proposes that the Association effectuate the Dissolution, and recommends the Delegates, voting on behalf of the Members of the Association, approve the following to effectuate the same:

(a) The Amended and Restated Master Declaration for Bright Crossing (the "**Amended Declaration**"), attached hereto as Exhibit A;

(b) The filing of Articles of Dissolution to dissolve the Association.

3. The Dissolution shall be contingent upon the Delegates approving the documents and actions set forth in Section 2 above, with the Dissolution being effective upon the filing of the Articles of Dissolution and the recording of the Amended Declaration.

4. Pursuant to Article XIII of the Articles, upon dissolution of the Association, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. As such, upon dissolution of the Association, the assets of the Association, if any, shall be conveyed or assigned to the Authority.

5. Any officer of the Association is hereby authorized and directed, in the name of the Association, to execute, acknowledge, seal and sign the Amended Declaration and the Articles of Dissolution, and to the record the same with the Clerk and Recorder of Adams County, Colorado and/or to file the same with the Colorado Secretary of State, as appropriate. Any officer of the Association shall be and is further authorized to take any and all other actions and to execute, acknowledge, seal, file and record any and all instruments and documents necessary or proper, and upon recording and/or filing, and after payment of all Association creditors, to distribute any remaining funds of the Association to the Authority.

[The rest of this page intentionally left blank.]

APPROVED AND ADOPTED THIS __ DAY OF _____, 2022.

BRIGHTON CROSSING MASTER
HOMEOWNERS ASSOCIATION, INC.

President

ATTEST:

Secretary

EXHIBIT A
AMENDED DECLARATION

AMENDED AND RESTATED
MASTER DECLARATION
FOR
BRIGHTON CROSSING

[NOTE: This Amended and Restated Master Declaration for Brighton Crossing (the “Amended and Restated Declaration”) is intended replace the existing Master Declaration for Brighton Crossing (the “Existing Declaration”) in its entirety. The primary purpose is to eliminate the Brighton Crossing Master Association (the “Association”), and to place design review and covenant enforcement responsibilities directly with the Brighton Crossings Authority (the “Authority”), on behalf of Brighton Crossing Metropolitan District Nos. 4-8. Under this Amended and Restated Declaration, owners will still be required to obtain approval for exterior modifications or alterations to their yards and homes. Also, the use restrictions in the Existing Declaration of Brighton Crossing have been carried over to this Amended and Restated Declaration. Developer rights, which are still needed by the developer, have been retained. All references to the Association have been removed.]

After recording return to:
WHITE BEAR ANKELE TANAKA & WALDRON
2154 E. Commons Avenue, Suite 2000
Centennial, Colorado 80122

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS	2
Section 1.1 <i>Architectural Review Committee</i>	2
Section 1.2 <i>Builder</i>	2
Section 1.3 <i>Declarant</i>	2
Section 1.4 <i>Design Guidelines</i>	3
Section 1.5 <i>District</i>	3
Section 1.6 <i>Fees</i>	3
Section 1.7 <i>Fines</i>	3
Section 1.8 <i>Governing Documents</i>	4
Section 1.9 <i>Improvements</i>	4
Section 1.10 <i>Lot</i>	4
Section 1.11 <i>Occupant</i>	4
Section 1.12 <i>Owner</i>	5
Section 1.13 <i>Person</i>	5
Section 1.14 <i>Property</i>	5
Section 1.15 <i>Rules and Regulations</i>	5
ARTICLE 2. ARCHITECTURAL REVIEW	6
Section 2.1 <i>Composition of ARC; Appointment and Authority of Representative</i>	6
Section 2.2 <i>Architectural Review Requirements; Authority of ARC</i>	6
Section 2.3 <i>Design Guidelines</i>	7
Section 2.4 <i>Procedures</i>	8
Section 2.5 <i>Vote and Appeal</i>	8
Section 2.6 <i>Prosecution of Work After Approval</i>	8
Section 2.7 <i>Inspection of Work</i>	8
Section 2.8 <i>Notice of Noncompliance</i>	9
Section 2.9 <i>Correction of Noncompliance</i>	9
Section 2.10 <i>Access Easement</i>	9
Section 2.11 <i>No Liability</i>	10
Section 2.12 <i>Variance</i>	10
Section 2.13 <i>Waivers; No Precedent</i>	11
Section 2.14 <i>Declarant's and District's Exemption</i>	11
Section 2.15 <i>Builders Exemption</i>	11

ARTICLE 3. RESTRICTIONS.....	11
Section 3.1 <i>Restrictions Imposed.</i>	11
Section 3.2 <i>Rights of Owners.</i>	12
Section 3.3 <i>Prohibited Activities.</i>	13
Section 3.4 <i>Landscaping.</i>	16
ARTICLE 4. EASEMENTS	16
Section 4.1 <i>Easements.</i>	16
Section 4.2 <i>Maintenance, Repair and Replacement, Right of Access and Easement.</i>	16
Section 4.3 <i>Easement for Access to District Property.</i>	17
Section 4.4 <i>Additional Easements.</i>	17
Section 4.5 <i>Limitations on Easements.</i>	17
Section 4.6 <i>Recorded Easements.</i>	17
ARTICLE 5. MAINTENANCE.....	17
Section 5.1 <i>General.</i>	17
Section 5.2 <i>District’s Right to Repair, Maintain and Reconstruct.</i>	18
Section 5.3 <i>Owner’s Acts or Omissions.</i>	18
ARTICLE 6. ENFORCEMENT	18
Section 6.1 <i>Enforcement, Generally.</i>	18
Section 6.2 <i>Enforcement Committee.</i>	19
Section 6.3 <i>Purpose and General Authority.</i>	19
Section 6.4 <i>Fees and Expenses.</i>	20
Section 6.5 <i>General Inspections; Violation Identified by Another Owner; Notice and Hearing; Remedies.</i>	20
Section 6.6 <i>No Liability.</i>	21
ARTICLE 7. RESERVED DECLARANT RIGHTS.....	22
Section 7.1 <i>Development Rights</i>	22
Section 7.2 <i>Special Declarant Rights</i>	22
Section 7.3 <i>Period of Declarant’s Rights.</i>	22
Section 7.4 <i>Subdivision or Replatting of Lots.</i>	23
Section 7.5 <i>Annexation; Withdrawal.</i>	23
Section 7.6 <i>Rights and Easements of Declarant and Builders.</i>	23
ARTICLE 8. GENERAL PROVISIONS.....	24
Section 8.1 <i>Powers and Authority.</i>	24
Section 8.2 <i>Rules and Regulations.</i>	25

Section 8.3	<i>Severability</i>	25
Section 8.4	<i>Minor Violations of Setback Restrictions</i>	25
Section 8.5	<i>Duration, Revocation and Amendment</i>	25
Section 8.6	<i>Notices</i>	26
Section 8.7	<i>Limitation on Liability</i>	26
Section 8.8	<i>No Representations, Guaranties or Warranties</i>	27
Section 8.9	<i>Disclaimer Regarding Safety</i>	27
Section 8.10	<i>District May Assign</i>	27
Section 8.11	<i>Waiver</i>	27
Section 8.12	<i>Headings</i>	28
Section 8.13	<i>Gender</i>	28
Section 8.14	<i>Action</i>	28
Section 8.15	<i>Sole Discretion</i>	28
Section 8.16	<i>Use of “Include,” “Includes,” and “Including.”</i>	28
Section 8.17	<i>No Waiver</i>	29
Section 8.18	<i>Exemption</i>	29
Section 8.19	<i>Runs with the Land; Binding Upon Successors</i>	29
Section 8.20	<i>District Lien</i>	29

**AMENDED AND RESTATED
MASTER DECLARATION
FOR BRIGHTON CROSSING**

THIS AMENDED AND RESTATED MASTER DECLARATION FOR BRIGHTON CROSSING (the “**Declaration**”) is made and entered the date and year hereinafter set forth by the members of the Brighton Crossing Master Association, Inc. (“**Association**”), acting through their duly elected Delegates, and with the consent of the Brighton Crossing Metropolitan District Nos. 4-8 (“**District No. 4**,” “**District No. 5**,” “**District No. 6**,” “**District No. 7**,” and “**District No. 8**” individual, and collectively, the “**Districts**”), the Brighton Crossings Authority (the “**Authority**”), and the Declarant.

WITNESSETH:

WHEREAS, there has been recorded a certain Master Declaration for Brighton Crossing in the real property records of Adams County, Colorado on December 13, 2002, at Reception Number C1067328, as amended (the “**Original Declaration**”); and

WHEREAS, Article 15, Section 15.4 of the Original Declaration provides that the Original Declaration may be amended upon approval of the Executive Board and at least sixty-seven percent (67%) of the votes in the Association; and

WHEREAS, pursuant to Article 4, Section 4.6 of the Original Declaration, the votes of Owners within the Association are to be cast by the Delegate elected by each Delegate District; and

WHEREAS, Article 15, Section 15.4 of the Original Declaration provides that no amendment shall be adopted or shall be effective at any time prior to the Turnover Date (as defined in the Original Declaration) unless the Declarant shall have granted its written approval to the same; and

WHEREAS, pursuant to C.R.S. §32-1-1004, as amended, and other provisions of Title 32 of C.R.S., the Districts are empowered to provide certain services to the residents of each District, including covenant enforcement and design review; and

WHEREAS, it is the desire of the Owners, acting through the Delegates, to amend the Original Declaration in its entirety, such that this Declaration shall fully supersede and replace the Original Declaration and all provisions thereof; and

WHEREAS, the Declarant has approved this Declaration, as evidenced by the Declarant’s execution of a consent hereto, attached hereto and incorporated herein.

NOW THEREFORE, the undersigned, being the President of the Association, certifies that, pursuant to Article 15, Section 15.4 of the Original Declaration, the Executive Board and Delegates to whom at least sixty-seven percent (67%) of all votes in the Association are allocated have

approved to amend in its entirety the Original Declaration, such that this Declaration shall fully supersede and replace the Original Declaration and all provisions thereof.

ARTICLE 1. DEFINITIONS

[NOTE: Generally, this Article 1 revises Article 1 in the Existing Declaration to eliminate definitions specific to the Association, to add necessary definitions relative to the proposed structure of placing architectural review and covenant enforcement responsibility with the Authority, and to otherwise revise any existing definitions as needed.]

Section 1.1 *Architectural Review Committee.*

“Architectural Review Committee” (the “ARC”) means the Architectural Review Committee which shall be appointed by the Declarant or the District as provided in Article 2 of this Declaration. The ARC shall review, consider and approve, or disapprove, requests for architectural approval, as more fully provided in this Declaration.

[NOTE: This definition is similar to the definition of Design Review Committee in Article 1 of the Existing Declaration.]

Section 1.2 *Builder.*

“Builder” means any Owner other than the Declarant who acquires one or more Lots for the purpose of constructing one or more residential structures thereon, and who is designated as a “Builder” by the Declarant in its sole discretion from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument duly recorded in the office of the Clerk and Recorder of Adams County, Colorado.

[NOTE: This definition is similar to the definition of Participating Builder in Article 1 of the Existing Declaration.]

Section 1.3 *Declarant.*

“Declarant” means Brookfield Residential (Colorado), LLC, a Nevada limited liability company and the successor to Carma Colorado, Inc, the declarant under the Original Declaration, and/or any other Person to whom the Declarant assigns one or more of the Development Rights or Special Declarant Rights as defined herein under this Declaration (which shall be the extent of the Development Rights and/or Special Declarant Rights to which such assignee succeeds), provided, that no assignment of any Development Rights or Special Declarant Rights shall be effective unless such assignment is duly executed by the assignor Declarant and recorded in Adams County, Colorado.

[NOTE: This definition is similar to the definition of Declarant in Article 1 of the Existing Declaration.]

Section 1.4 *Design Guidelines.*

“Design Guidelines” means a manual of design guidelines for the Property, or other design or architectural guidelines, to interpret and/or implement any provisions of Article 2 of this Declaration, specifically, and this Declaration in general, as more fully provided for in Section 2.3 of this Declaration. The Declarant shall have the authority to enact, issue promulgate, modify, amend, repeal, and re-enact Design Guidelines during the period set forth in Section 7.3 hereof. Thereafter, the governing board of the District shall have such authority.

[NOTE: This definition is similar to the definition of Design Guidelines in Article 1 of the Existing Declaration.]

Section 1.5 *District.*

“District” means District No. 4 relative to the property within the boundaries of District No. 4, District No. 5 relative to the property within the boundaries of District No. 5, District No. 6 relative to the property within the boundaries of District No. 6, District No. 7 relative to the property within the boundaries of District No. 7, and District No. 8 relative to the property within the boundaries of District No. 8, and/or any other metropolitan district(s) or authorities to which any of the above listed Districts may transfer or assign any or all of the rights and duties of the District under this Declaration. Each such assignment or transfer, if any, shall be effective upon recording in Adams County, Colorado, of a document of transfer or assignment, duly executed by the District. Notwithstanding the foregoing, each of the Districts delegates, transfers, and assigns its rights and duties under this Declaration to the Authority, and the Authority shall be considered the “District” for all purposes of this Declaration unless otherwise assigned as provided herein. In addition to the authority to perform the function set forth in this Declaration, the District has such other authority with respect to the performance of such functions, as may be permitted by the Special District Act, C.R.S. 32-1-101 et seq., including but not limited to the right to adopt rules and regulations, fees, rates, tolls, penalties and charges, and undertake enforcement actions.

[NOTE: This definition has been added specific to the assignment of covenant enforcement and design review authority to the Districts and the Authority.]

Section 1.6 *Fees.*

“Fees” means, collectively, (i) any type of charge for any services or facilities provided by or through the District, or (ii) any charges imposed by the District for the fulfillment of any of its rights or obligations hereunder.

[NOTE: This definition has been added.]

Section 1.7 *Fines.*

“Fines” means any monetary penalty imposed by the District, the ARC, or the Enforcement Committee, if any, against an Owner due to a violation of the Governing Documents.

[NOTE: This definition has been added.]

Section 1.8 *Governing Documents.*

“Governing Documents” means this Declaration, any Design Guidelines adopted by the Declarant or the governing board of the District, any Rules and Regulations adopted by the Declarant or the governing board of the District, and any other procedures or resolutions adopted by the governing board of the District to effectuate the provisions of this Declaration.

[NOTE: This definition is similar to the definition of Governing Documents in Article 1 of the Existing Declaration, but eliminates references to those documents, such as the Articles of Incorporation and the Bylaws, that are specific to the Association.]

Section 1.9 *Improvements.*

“Improvements” means all improvements, structures, buildings, and any and all landscaping features, buildings, outbuildings, geothermal systems, solar systems, hot tubs, satellite dishes, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, walkways, sprinkler systems, garages, roads, driveways, parking areas, fences, gates, basketball backboards and hoops, swing sets or other play structures, screening walls, retaining walls, stairs, decks, fixtures, outdoor sculptures or artwork, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment. Improvements include, without limitation, all initial Improvements constructed on any Lot by the Declarant or a Builder and all subsequent changes, modifications, alterations or adjustments to any previously approved Improvement, including any change of exterior appearance, color, or texture, other than any changes, modifications, alterations or adjustments to the interior of a structure on a Lot.

[NOTE: This definition is similar to the definition of Improvement in Article 8, Section 8.1 of the Existing Declaration.]

Section 1.10 *Lot.*

“Lot” means each platted lot shown on any recorded subdivision plat of the Property, as the same may be resubdivided or replatted from time to time (subject to the restrictions contained in this Declaration); and any other real property as may hereafter be brought within the jurisdiction of this Declaration, with the exception of any publicly dedicated property, any property owned or leased by the District, and any property which is in the form of common elements owned or maintained by any homeowners association established for any portion of the property subject to this Declaration.

[NOTE: This definition is similar to the definition of Unit in Article 1 of the Existing Declaration.]

Section 1.11 *Occupant.*

“Occupant” means any Person, other than the Declarant, a Builder, the ARC, the Enforcement Committee, if any, and the District, who from time to time uses or occupies any portion of a Lot under an ownership right or any lease, sublease, license or concession or other use and occupancy agreement, any guests and invitees of any Owner or Occupant and any other Person that uses any portion of the Property.

[NOTE: This definition has been added.]

Section 1.12 *Owner.*

“Owner” means each fee simple title holder of a Lot, including the Declarant, any Builder and any other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. If there is more than one fee simple holder of title, “Owner” includes each such Person, jointly and severally.

[NOTE: This definition is similar to the definition of Owner in Article 1 of the Existing Declaration.]

Section 1.13 *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 legal entity or any combination thereof and includes each Owner, the Declarant, any Builder, the ARC, and the District.

[NOTE: This definition is similar to the definition of Person in Article 1 of the Existing Declaration.]

Section 1.14 *Property.*

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

[NOTE: This definition is similar to the definition of Real Estate in the Existing Declaration.]

Section 1.15 *Rules and Regulations.*

“Rules and Regulations” means rules and regulations concerning, without limitation, (i) the use of the Property, (ii) certain use restrictions on the Lots, and/or (iii) other restrictions governing the conduct of Owners and/or Occupants, as such rules and regulations are adopted the Declarant or the governing board of the District and as may be amended from time to time. The Rules and Regulations are binding upon all Owners and Occupants. The Declarant shall have the authority to enact, issue promulgate, modify, amend, repeal, and re-enact Rules and Regulations during the period set forth in Section 7.3 hereof. Thereafter, the governing board of the District shall have such authority.

[NOTE: This definition is similar to the definition of Rules and Regulations in Article 1 of the Existing Declaration.

ARTICLE 2. ARCHITECTURAL REVIEW

Section 2.1 *Composition of ARC; Appointment and Authority of Representative.*

2.1.1 The ARC will consist of three (3) or more natural persons or a separate entity, such as an architectural firm, appointed as provided herein. The Declarant shall have the authority to appoint the members of the ARC during the period set forth in Section 7.3 hereof. Thereafter, the governing board of the District shall have the authority to serve as, or to appoint the members of, the ARC. The power to “appoint” the ARC, as provided herein, shall include without limitation the power to: constitute the initial membership of the ARC; appoint member(s) to the ARC on the occurrence of a vacancy therein, for whatever reason; and remove any member of the ARC, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the entity which then as the power to appoint the ARC.

2.1.2 The ARC may at any time, from time to time, with the consent of the entity then authorized to appoint the members of the ARC, appoint a representative to act on its behalf. If the ARC does so, then the actions of such representative shall be the actions of the ARC, subject to the right of appeal as provided below. However, if such representative is appointed by the ARC, then the ARC shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative’s authority to act on behalf of the ARC and the power to at any time remove or replace such representative, subject to the approval of the entity which then has the authority to appoint the ARC.

[NOTE: This section carries forward the establishment of a review committee, as currently set forth in Article 8, Section 8.3 of the Existing Declaration. Under the Existing Declaration, the Declarant has the authority to appoint the members of the committee the earlier of 20 years after the date of the recording of the Original Declaration or 60 days after the date that the Declarant sells all property subject to the Declaration. This provision grants the Declarant the authority to appoint the ARC until such time as the Declarant no longer owns any property subject to the Amended and Restated Declaration.]

Section 2.2 *Architectural Review Requirements; Authority of ARC.*

2.2.1 Except as provided in Sections 2.3, 2.14 and 2.15 of this Declaration, no Improvement may be constructed, erected, placed, altered, planted, applied, installed or modified upon any Lot, unless the Improvement is in full compliance with all provisions of this Declaration, the Design Guidelines and/or the Rules and Regulations. Prior to constructing, erecting, placing, altering, planting, applying, installing or modifying an Improvement upon any Lot, the Owner of the Lot must submit plans and specifications of

the proposed Improvement to the ARC for review and consideration, and then receive approval in writing from the ARC, all in accordance with the Governing Documents.

2.2.2 The ARC shall endeavor to exercise its reasonable judgment in an attempt to provide for each proposed Improvement to generally harmonize with the existing surroundings, residences, landscaping and structures.

2.2.3 The Design Guidelines and/or the Rules and Regulations may provide for the payment of a Fee to accompany each request for approval of any proposed Improvement submitted to the ARC. Any such Fee shall be uniform for similar types of proposed Improvements or shall be determined in any other reasonable manner. Additionally, in its review of such plans, specifications and other materials and information, the ARC may require that the Owner reimburse the ARC for the actual expenses incurred by the ARC in the review and approval process. Such Fee and amounts, if any, shall be the personal obligation of the Owner requesting approval from the ARC and shall be part of the District's lien as described in Section 6.5.3.5 and shall be collectible by the District in the same manner as other Fees authorized to be charged and collected by the District pursuant to Colorado law.

[NOTE: This section carries forward the requirement that owners obtain approval for Improvements, as is currently set forth in Article 8, Section 8.1 of the Existing Declaration.]

Section 2.3 *Design Guidelines.*

During the period set forth in Section 7.3 hereof, the Declarant shall have the authority to enact, issue promulgate, modify, amend, repeal, and re-enact the Design Guidelines. Thereafter, the governing board of the District shall have such authority. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the ARC, may state procedural requirements, or may specify acceptable Improvements that may be installed without prior approval of the ARC. The Design Guidelines may permit the District to send demand letters and notices, levy and collect Fees, Fines and interest, and negotiate, settle and/or take any other actions with respect to any violation or alleged violation of any of the Governing Documents. Any Design Guidelines so adopted shall be consistent, and not in conflict, with this Article and this Declaration. In addition, the Design Guidelines may provide for blanket approvals, interpretations, or restrictions. By way of example, and not by way of limitation, the Design Guidelines 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.

[NOTE: This section is similar to Article 8, Section 8.4 of the Existing Declaration. However, rather than having the Declarant adopt the initial guidelines, which are then subject to amendment by the committee (with the approval of the Declarant as long as the Declarant owns any property subject to the Existing Declaration), this provision grants the authority to adopt design guidelines to the Declarant initially, and then to the governing board of the District (i.e., the Authority).]

Section 2.4 *Procedures.*

The ARC will review and approve in writing (which may be with conditions and/or requirements), or disapprove, each request for architectural approval within sixty (60) days after the complete submission to the ARC of the plans and specifications and other materials and information which the ARC may require in conjunction therewith in accordance with the design review procedures set forth in the Design Guidelines. If the ARC fails to review and approve in writing (which may be with conditions and/or requirements), or disapprove, a request for architectural approval within sixty (60) days after the complete submission of the plans and specifications and other information requested with respect thereto, such request is deemed approved by the ARC.

[NOTE: This section is similar to Article 8, Sections 8.7 and 8.8 of the Existing Declaration.]

Section 2.5 *Vote and Appeal.*

The affirmative, majority vote of the ARC is required to approve a request for approval pursuant to this Article (which may be with conditions and/or requirements), unless the ARC has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the ARC decides a request for architectural approval which is adverse to the Owner, then the Owner shall have the right to appeal such decision to the full ARC, upon a written request therefor submitted to the ARC within thirty (30) days after such decision by the ARC's representative.

[NOTE: This section has been added.]

Section 2.6 *Prosecution of Work After Approval.*

After approval (which may be with conditions and/or requirements) of any proposed Improvement, the Owner is required to complete and construct the Improvement promptly and diligently, and in complete conformity with all conditions and requirements of the approval and any provision of the Design Guidelines relating to construction.

[NOTE: This section is similar to article 8, Section 8.10 of the Existing Declaration.]

Section 2.7 *Inspection of Work.*

The ARC, the District, and the Enforcement Committee, if any, and/or any duly authorized representative of the same, has the right to inspect any Improvement at any time, including prior to or after completion, to determine whether or not the Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article.

[NOTE: This section is similar to the portion of Article 8, Section 8.12 of the Existing Declaration as it relates to inspection.]

Section 2.8 *Notice of Noncompliance.*

If, as a result of inspections or otherwise, the District, the ARC, or the Enforcement Committee, if any, determines that any Improvement has been constructed without obtaining all required approvals (which may be with conditions and/or requirements), or was not constructed in substantial compliance with the approval that was granted, then the District or the Enforcement Committee, if any, will notify the Owner in writing of the non-compliance, specifying the particulars of the noncompliance (“**Notice of Noncompliance**”).

[NOTE: This section is similar to the portion of Article 8, Section 8.12 of the Existing Declaration as it relates to notice of violations.]

Section 2.9 *Correction of Noncompliance.*

If it has been determined that a non-compliance exists, the Owner responsible for such non-compliance must remedy or remove the same, and return the subject property or structure to a condition acceptable to the District or the Enforcement Committee, if any, within the period specified in the Notice of Noncompliance. The District may, at its option, record a notice of non-compliance against the Lot on which the non-compliance exists, may impose Fines, penalties and interest, may remove the non-complying Improvement, or may otherwise remedy the non-compliance, and the Owner responsible for such non-compliance shall reimburse the District, upon demand, for all Fines, penalties, interest, costs and expenses, as well as anticipated costs and expenses, with respect thereto. Such Fines, penalties, interest, costs and expenses shall be the personal obligation of the Owner and shall be part of the District’s lien as described in Section 6.5.3.5 and shall be collectible by the District in the same manner as other fees authorized to be charged and collected by the District pursuant to Colorado law.

[NOTE: This section is similar to Article 8, Section 8.13 of the Existing Declaration.]

Section 2.10 *Access Easement.*

Each Owner hereby grants to the Declarant, the District, the ARC, and the Enforcement Committee, if any, including the agents, representatives, employees and contractors of the Declarant, the District, the ARC and the Enforcement Committee, if any, and each such Person on, over, under and across each Lot, excluding any habitable structure and the interior of any residence thereon, easements for performing any of the actions contemplated in the Governing Documents, including inspections and enforcement of each of the terms and provisions of the Governing Documents. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owners of any affected Lot; except that no such notice is required (i) in connection with any exterior, non-intrusive inspections and maintenance; and (ii) in emergency situations.

[NOTE: This section is similar to Article 10, Section 10.4 of the Existing Declaration.]

Section 2.11 *No Liability.*

Neither the Declarant, the ARC, the District, the Enforcement Committee, if any, or any member, director, officer, agent, representative, employee or contractor of any the same (the “**Released Parties**”) are liable or shall be liable to any Person by reason of any action, failure to act, approval (which may be with conditions and/or requirements), disapproval, or failure to approve or disapprove, in regard to any matter whether for damage or in equity. In reviewing or approving any matter, the Released Parties are not responsible for any issue related to the Improvements, whether structural or otherwise, and whether submitted for review or otherwise. The Released Parties are not responsible for any matter related to safety. The Released Parties are not responsible for the conformance of Improvements with applicable law or compliance with any other standard or regulation, and any approval (which may be with conditions and/or requirements) of any Improvement by the ARC will not be deemed an approval of any such matters, will not be deemed to represent that the Improvement conforms to applicable law or complies with any other standards or regulations, and will not constitute a warranty by the ARC to any Owner of the adequacy of design, workmanship or quality of such work or materials for any Owner’s intended use. The ARC will not make any investigation into title, ownership, easements, rights-of-way, or other rights appurtenant to property with respect to architectural requests and shall not be liable for any disputes relating to the same. No Owner or other Person is a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by, the Released Parties. Each Owner (i) waives and releases the Released Parties from all claims related to approval or disapproval of any Improvements and (ii) waives and releases all claims against the Released Parties. The foregoing release and waiver is made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The ARC members, acting in that capacity, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The ARC members, acting in that capacity, have no personal liability with respect to any contract or other commitment made or action taken on behalf of the ARC.

[NOTE: This section is similar to Article 8, Section 8.14 of the Existing Declaration.]

Section 2.12 *Variance.*

The ARC may, but under no circumstances is obligated to, grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article, Article 3 of this Declaration as applicable, or any Design Guidelines promulgated hereunder, 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 will be granted in the ARC’s sole discretion and may only be granted if such variance does not impose a material detriment or injury to the other property or improvements within the Property and does not militate against the general intent and purpose hereof. However, any variance that may be granted under this Section is only a variance from the requirements of the applicable Governing Document provisions for the individual Owner, and is not a variance from the requirements of any applicable governmental or quasi-governmental agency or entity. No granting of a variance or adjustment to any one Owner

shall constitute a variance or adjustment, or the right to a variance or adjustment, to any or all other Owners.

[NOTE: This section is similar to Article 8, Section 8.15 of the Existing Declaration.]

Section 2.13 *Waivers; No Precedent.*

The approval or consent of the ARC, or any representative thereof, to any application for approval does not constitute a waiver of any right to withhold or deny approval or consent by such Person, or any Person, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter. Any changes in plans and specifications previously approved by the ARC must be reviewed and approved by the ARC in the same manner as the initial plans and specifications.

[NOTE: This section is similar to Article 8, Section 8.9 of the Existing Declaration.]

Section 2.14 *Declarant's and District's Exemption.*

Notwithstanding anything to the contrary, the Declarant and the District are exempt from this Article and all provisions of this Declaration that require ARC review and/or approval.

[NOTE: The exemption for the Declarant to obtain design review approval contained in this section is similar the same exception contained in Article 8, Section 8.1 of the Existing Declaration.]

Section 2.15 *Builders Exemption.*

Notwithstanding anything to the contrary, as long as, and to the extent that, a Builder has received written architectural approval from the Declarant, such Builder shall, as to Declarant-approved Improvements, be exempt from this Article and all provisions of this Declaration that require ARC review and/or approval.

[NOTE: This section has been added.]

ARTICLE 3. RESTRICTIONS

[NOTE: This Article 3 carries forward the existing restrictive covenants set forth in Article 9 of the Existing Covenants. It also includes the timeframe for the installation of landscaping currently found in Section 6.2 of the Existing Covenants.]

Section 3.1 *Restrictions Imposed.*

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

Declaration and in the Governing Documents.

Section 3.2 *Rights of Owners.*

Neither the Declarant nor the governing board of the District shall not adopt any rule or regulation in violation of the following provisions:

3.2.1 Equal Treatment.

Similarly situated Owners and Occupants shall be treated similarly.

3.2.2 Speech.

The rights of Owners to display political signs and symbols in or on their Lots of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Declarant or the governing board of the District may adopt, as part of the Design Guidelines or Rules and Regulations, reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and Occupants.

3.2.3 Religious and Holiday Displays.

The rights of Owners to display religious and holiday signs, symbols, and decorations of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Declarant or the governing board of the District may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and Occupants.

3.2.4 Activities Within Dwelling.

No rule shall interfere with the activities carried on within the confines of dwellings on the Lots, except that the Declarant or the governing board of the District may adopt Rules and Regulations that may prohibit activities not normally associated with property restricted to residential use, and may restrict or prohibit any activities that create monetary costs for the District or other Owners, that may pose a threat to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

3.2.5 Reasonable Rights to Develop.

No rule or action by the District shall unreasonably impede the Declarant's or any Builder's right to develop the Lots owned by them in accordance with this Declaration.

3.2.6 Abriding Existing Rights.

If any rule would otherwise require Owners or Occupants to dispose of personal property which they owned at the time they acquired their interest in the Lot and such ownership was in compliance with all Rules and Regulations in force at that time, such rule shall not apply to any such Owners without their written consent. However, all subsequent Owners and Owners of that Lot shall comply with such rule.

Section 3.3 *Prohibited Activities.*

The following activities are prohibited within the Property unless expressly authorized (and if authorized, subject to such conditions as may be imposed) by the governing board of the District:

3.3.1 Subdivision.

Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot, shall be prohibited without the prior written consent of the Declarant during the time set forth in Section 7.3, and without the prior written consent of the governing board of the District thereafter;

3.3.2 Commercial Activities.

Any business, profession, trade, or similar activity shall be prohibited, except that an Owner or Occupant may conduct business activities within a Lot so long as:

- (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot;
- (b) the activity conforms to all zoning and other legal requirements for the activity that are applicable to the Lot in question;
- (c) the activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Owners or Occupants; and
- (d) the activity is consistent with the residential character of the Property and does not constitute a nuisance, hazardous or offensive use, or threaten the security or safety of other Owners or Occupants, as may be determined in the reasonable discretion of the governing board of the District.

3.3.3 Leases.

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot and shall specifically include, without limitation, a month-to-month rental. Owners shall have the right to lease their Lot only under the following conditions:

- (a) All leases shall be in writing.

(b) All leases shall provide that the terms of the lease and the tenant's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration, the Rules and Regulations, and the Design Guidelines, as the same may be amended from time to time, and shall provide that any failure by such tenant to comply with the provisions of these instruments, in any respect, shall be a default under the lease, said default to be enforceable by either the District or the Owner/landlord, or both.

3.3.4 Nuisances.

Any use, activity, or practice which unreasonably interferes with the peaceful enjoyment or possession of a Lot shall be prohibited. In no event shall the activities of the Declarant or a Builder which are reasonably necessary to the exercise of the rights granted to them by this Declaration or under applicable laws be considered a "nuisance" unless such activities unreasonably interfere with any Owner's use and enjoyment of such Owner's Lot.

3.3.5 Vehicles.

Parking, storing, servicing or repairing commercial vehicles, recreational vehicles, mobile homes, boats, campers, trailers, watercraft, or other oversized vehicles, in accordance with applicable motor vehicle registration laws, or any inoperative vehicles, shall be permitted only if the vehicle is completely enclosed within a garage.

3.3.6 Animals.

In no event may any Owner or Occupant engage in the commercial breeding of animals on any portion of the Property, and in no event will any Owner or Occupant keep any animals other than common household pets within the Property. The Declarant or the governing board of the District may adopt reasonable Rules and Regulations regarding domestic pets designed to minimize damage and disturbance to other Owners and Occupants, including Rules and Regulations requiring damage deposits, waste removal, leash controls, noise controls and occupancy limits.

3.3.7 Vegetation.

Owners and Occupants may not engage in any activities that materially disturb or destroy the vegetation, wildlife or air quality within the Property, or which use excessive amounts of water, or which result in unreasonable levels of sound or light. The foregoing shall not prevent an Owner from removing or replacing vegetation on his or her Lot that was installed by the Owner or his or her predecessor in interest as the Owner of the Lot in question if the removed landscaping is replaced with a substantially similar item of landscaping, or from removing dead or diseased landscaping on such Owner's Lot, or from taking any similar action with the approval of the ARC.

3.3.8 Grade.

No Owner may obstruct or re-channel drainage flows, or alter the location or installation of drainage swales, storm sewers or storm drains. The Declarant and the District, however, may engage in any of the activities described in this subsection if such activities do not materially diminish the value of, or unreasonably interfere with, the use and enjoyment of any Lot, and may engage in such activities which diminish the value of, or unreasonably interfere with, the use and enjoyment of any Lot with the consent of the Owner of such Lot.

(The provisions of subsections 3.3.1 and 3.3.2 shall not be deemed to prohibit or restrict the right of the Owner of any Lot that is zoned for apartments, condominiums or similar uses to construct and operate an apartment or condominium development upon such Lot, or to subdivide all or any portion of such Lot into individual condominium units, nor shall it restrict the operations of any homeowners association created for any part of the Property.)

3.3.9 Parking.

All parking within the Property shall be subject to any applicable City of Brighton ordinances and to any Rules and Regulations promulgated by the Declarant or the governing board of the District, including without limitation any such Rules and Regulations that may be promulgated for the purpose of governing parking on public streets.

3.3.10 Use.

All Lots shall be used only for those uses and purposes allowed by applicable City of Brighton zoning ordinances and regulations.

3.3.11 Exterior Lighting.

All lighting fixtures installed on or outside the exterior walls of any dwelling or other structure shall be subject to the approval of the ARC for harmonious development and the prevention of lighting nuisances to other Lots. Such lighting fixtures also shall comply fully with any applicable City of Brighton lighting ordinances, regulations or requirements.

3.3.12 Miscellaneous Improvements.

No fences shall be permitted except with the prior, written approval of the ARC and except such fences as may be constructed, installed or located by the Declarant in its development of, or construction of Improvements in the Property. None of the fences which are or will be installed by the Declarant shall be modified in any way without the prior approval of the ARC.

Section 3.4 *Landscaping.*

The front yard area of each Lot on which has been constructed a detached or attached single residential dwelling shall be landscaped using long-lived ground cover, sod, shrubs and trees. Short-lived and non-living landscape materials may be utilized only as a supplement to long lived elements. The front yard area of each Lot improved with a detached or attached single residential dwelling shall be landscaped by the first Owner thereof (other than the Declarant or a Builder), with the prior, written approval of the ARC, within nine (9) months after acquisition of title to such Lot by such Owner from the Declarant or a Builder or during the first growing season after such Owner acquires title to such Lot from the Declarant or a Builder, whichever occurs later. Each Owner shall then be responsible for maintaining his, her, or its Lot and all structures, driveways, sidewalks, parking areas, landscaping, drainage, and other improvements comprising the Lot. Each Owner also shall be responsible for: (a) irrigating and re-seeding or sodding of lawn areas within the Owner's Lot, as needed; (b) maintaining and replacing landscaping materials, including flower beds; (c) maintaining, winterizing, repairing and replacing, as necessary, the irrigation and sprinkler system, if any, serving the Lot; (d) repairing or replacing any damage to landscaping located on such Owner's Lot resulting from any repair or maintenance activities conducted on such Lot; and (e) maintaining and replacing, as necessary, any of the tree(s) that are located in any landscaped area or parkway within the right-of-way immediately adjacent to the front of such Owner's Lot.

ARTICLE 4. EASEMENTS

Section 4.1 *Easements.*

In addition to other easements which may be granted or reserved elsewhere in this Declaration, the following Sections describe easements to which the Property is or may be subject.

[NOTE: This section has been added.]

Section 4.2 *Maintenance, Repair and Replacement, Right of Access and Easement.*

Each Owner hereby grants and reserves easements over each Owner's Lot in favor of the Declarant, the District, the ARC, and the Enforcement Committee, if any, including each of their respective agents, representatives, contractors and employees, for performing maintenance, repair, or replacement, or other services, and enforcement of any provision in the Governing Documents. The access easements granted in this Section 4.2 may be exercised only during reasonable hours after reasonable notice to the Owner of any affected Lot; provided, however, that no such notice is required in connection with any exterior, non-intrusive maintenance and in emergency situations entry upon a Lot may be made at any time, provided that the Owner is notified of impending emergency entry as early as is reasonably possible. The interior of any residence or building is not subject to the easements provided for in this Section 4.2.

[NOTE: This section is similar to Article 10, Section 10.4 of the Existing Declaration.]

Section 4.3 *Easement for Access to District Property.*

If any portion of the Property is developed and subjected to a declaration of covenants, conditions and restrictions and becomes part of a homeowners association governing such portion of the Property, any such declaration shall provide for an easement to all Owners and the District, for access to any property owned by the District which is accessible from property that becomes subject to that declaration and which is thereafter owned by any such homeowners association or which becomes part of the common elements of any such homeowners association.

[NOTE: This section has been added.]

Section 4.4 *Additional Easements.*

If the Declarant withdraws any portion of the Property from this Declaration, the Declarant shall retain whatever easements are reasonably necessary or desirable across the Property for access to and utility services for the portion of the Property withdrawn.

[NOTE: This section has been added.]

Section 4.5 *Limitations on Easements.*

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

[NOTE: This section has been added.]

Section 4.6 *Recorded Easements.*

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

[NOTE: This section has been added.]

ARTICLE 5. MAINTENANCE

Section 5.1 *General.*

The maintenance, repair and replacement of all Improvements on each Lot, including landscaping, exterior building surfaces, roofs, patios, porches, decks, sidewalks, and driveways on the Lot, shall be performed by the Owner thereof at such Owner's sole cost and expense. Any Improvements constructed or erected upon the Lot by any Owner after the initial construction of

the residence on the Lot by the Declarant or a Builder shall be maintained, repaired and replaced by the Owner of the Lot.

[NOTE: This section clarifies that owners are responsible for the maintenance of their lots and homes, which is implied but not expressly stated, other than as it relates to landscaping, in Article 6 of the Existing Declaration.]

Section 5.2 *District's Right to Repair, Maintain and Reconstruct.*

In the event any Owner shall fail to perform his or her maintenance, repair and/or reconstruction obligations in a manner satisfactory to the governing board of the District, the District may, if said failure continues for a thirty (30) day period after written notice to the Owner, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or reconstruction. The cost of such maintenance, repair or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be part of the District's lien as described in Section 6.5.3.5 and shall be collectible by the District in the same manner as other fees authorized to be charged and collected by the District pursuant to Colorado law.

[NOTE: This section carries forward the right to self-help currently reserved to the Association in Article 10, Section 10.4 of the Existing Declaration.]

Section 5.3 *Owner's Acts or Omissions.*

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any property owned and/or maintained by the District or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado and shall be part of the District's lien as described in Section 6.5.3.5 and shall be collectible by the District in the same manner as other fees authorized to be charged and collected by the District pursuant to Colorado law. A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be made by the governing board of the District after providing the Owner with notice and the opportunity for a hearing.

[NOTE: This section has been added.]

ARTICLE 6. ENFORCEMENT

Section 6.1 *Enforcement, Generally.*

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Rules and Regulations,

the Design Guidelines and any other Governing Documents, as at any time amended, may be by any proceeding at law or in equity against any Persons violating or attempting to violate any such provision, and possible remedies include all of those available at law or in equity. The Declarant and the District have the right, but not the duty, to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under this Declaration or any other such documents, the prevailing party shall be entitled to recover its costs and attorneys' fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Declarant, the District, the ARC, and/or the Enforcement Committee, if any, to enforce any covenant, restriction or other provision contained in this Declaration shall in no event give rise to any liability, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction or other provision of this Declaration. Each Owner, by acceptance of title to a Lot, assigns and delegates and consents to the assignment and delegation to the District, in their own name as an Owner of a Lot within the Property, the authority, power, right, and responsibility to enforce the Governing Documents. The foregoing shall include the right of the District to (a) send demand letters and notices, (b) charge interest and/or late charges, to levy and collect Fines, (c) impose liens (as provided in C.R.S. Section 32-1-1001(j)(1), as amended), (d) negotiate, settle and/or take any other actions, with respect to any violation(s), or alleged violation(s), of any of the Governing Documents, (e) exercise self-help or take action to abate any violation of the Governing Documents, and/or (f) record a notice of violation.

[NOTE: This section has been added, but carries forward the general enforcement tools currently available to the Association, including the imposition of fines, self-help, and legal action.]

Section 6.2 *Enforcement Committee.*

The governing board of the District shall have the right to establish a committee to enforce the Governing Documents (the “**Enforcement Committee**”) and, upon its establishment, the members of the Enforcement Committee will be appointed and removed by the governing board of the District and shall have the same rights as the District under this Article 6 and as elsewhere set forth in this Declaration in relation to the enforcement of the Governing Documents. The District shall be responsible for the ministerial administration and enforcement of the Governing Documents, and has the right to: (a) accept complaints for violations of the Governing Documents; (b) submit complaints regarding violations of the Governing Documents; (c) inspect the Property for violations of the Governing Documents; (d) issue various notices to Owners regarding the Governing Documents; and (e) provide all ministerial administration and enforcement of the Governing Documents.

[NOTE: This section has been added.]

Section 6.3 *Purpose and General Authority.*

The District or the Enforcement Committee, if any, shall review all complaints and notifications provided by the Declarant, a Builder, an Owner, a resident within the Property, or the ARC regarding any alleged violation of the Governing Documents. The District or the

Enforcement Committee, if any, also has the right to make an investigation on its own regarding potential violations. The District or the Enforcement Committee, if any, has the authority to determine whether a violation has occurred by any Owner or Occupant, and upon such determination, may issue to an Owner a notice of violation identifying the particular circumstances or conditions of the violation and require Owner to take such action as may be necessary to correct, remedy or otherwise remove the violation, including the time period in which the violation is to be remedied as further set forth in Section 6.5.

[NOTE: this section has been added.]

Section 6.4 *Fees and Expenses.*

All expenses of the District or the Enforcement Committee, if any, must be paid by the District with revenues derived from that portion of the Property with respect to which the District's or the Enforcement Committee's services are required or performed. The District has the right to charge Fees and Fines for costs of enforcement of the Governing Documents and the costs incurred to correct, remedy or otherwise remedy violations, in amounts which may be established by the District from time to time.

[NOTE: This section has been added.]

Section 6.5 *General Inspections; Violation Identified by Another Owner; Notice and Hearing; Remedies.*

6.5.1 Any member or authorized agent or consultant of the Enforcement Committee or the ARC, or any authorized officer, director, employee or agent of the District may enter upon any Lot, at any reasonable time after notice to Owner, as more fully provided in Section 4.2, without being deemed guilty of trespass, in order to investigate or inspect any portion of the Property for alleged violations of the Governing Documents.

6.5.2 If (i) an investigation or inspection reveals that any part or portion of a Lot is not in compliance with the Governing Documents or any action is being taken in violation of the Governing Documents, (ii) the ARC has submitted a Notice of Noncompliance with respect to a Lot, or (iii) another Owner or Occupant has submitted a complaint in accordance with the Rules and Regulations, the District or the Enforcement Committee, if any, may send a notice of alleged violation (a "**Notice of Alleged Violation**") to the Owner of such Lot in accordance with the Rules and Regulations.

6.5.3 If, after receipt of the Notice of Alleged Violation, the Owner fails to remedy the violation within the time period specified in the Notice of Alleged Violation or thereafter violates the same covenant or rule, the District shall have all remedies available to it at law or in equity, including, without limitation, the following remedies and any other remedies set forth herein:

6.5.3.1 The District may record a notice of violation against the Lot on which the violation exists;

6.5.3.2 The District has the right to remove, correct or otherwise remedy any violation in any manner the District deems appropriate;

6.5.3.3 The District may file an action for injunctive relief to cause an existing violation to be brought into compliance with the Governing Documents and the District shall recover all costs and attorneys' fees associated with bringing the action;

6.5.3.4 The District may levy and collect Fees, charges, penalties and Fines for the violation of any provisions of the Governing Documents. Prior to the imposition of any Fines, the District or the Enforcement Committee, if any, shall give the Owner to be subject to the Fine notice and the opportunity for a hearing before the governing board of District or the Enforcement Committee, if any. The Rules and Regulations may further define the process by which such Fines may be imposed, including but not limited to establishing the schedule of Fines to be imposed.

6.5.3.5 The District may collect, and shall have a statutory perpetual lien pursuant to § 32-1-1001(1)(j)(I), C.R.S. against the Lot subject to the violation to secure, (1) payment for reimbursement by the violating Owner for any remedial work performed by the District to remove, correct or otherwise remedy the violation, (2) payment for expenses incurred in obtaining injunctive relief, including costs and attorneys' fees, (3) payment of any Fines levied by the District against such Lot, plus the following amounts, to the extent not inconsistent with applicable laws, (4) interest on such amount at a rate equal to eighteen percent (18%), and (5) all costs and expenses of collecting the unpaid amount, including, without limitation, reasonable attorneys' fees.

[NOTE: This section is similar to Article 5, Section 5.3 of the Existing Declaration.]

Section 6.6 *No Liability.*

The Released Parties are not liable to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter whether for damages or in equity. In reviewing any alleged violation, the Released Parties are not responsible for any issue related to the alleged violation. No Owner or other Person is a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Released Parties. Each Owner (i) waives and releases the Released Parties from all claims related to the actions of the Released Parties and (ii) waives and releases all claims against the Released Parties. The foregoing waiver and release are made by each Owner to the fullest extent permitted by the law and for and on behalf of itself, its assigns, executors, heirs, occupants, personal representatives, representatives, and successors. The members of the governing board of the District, the ARC, and the Enforcement Committee members, acting in that capacity, shall not be

liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The members of the governing board of the District, the ARC, and the Enforcement Committee members, acting in that capacity, shall have no personal liability with respect to any contract or other commitment made or action taken on behalf of the District, the ARC and/or the Enforcement Committee, if any.

[NOTE: This section has been added.]

ARTICLE 7. RESERVED DECLARANT RIGHTS

Section 7.1 *Development Rights.*

The following rights or combination of rights (the “**Development Rights**”), as more fully provided herein, are hereby reserved for the Declarant and its successors and assigns:

- 7.1.1 To add real estate to the Property;
- 7.1.2 To create Lots;
- 7.1.3 To subdivide or replat Lots; or
- 7.1.4 To withdraw real estate from the Property.

The Declarant may exercise its Development Rights in all or any portion of the Property, and no assurances are made as to the boundaries or order of exercise of any such Development Rights.

[NOTE: This section reserves to the Declarant rights similar to those contained in Article 14, Section 14.2 of the Existing Declaration.]

Section 7.2 *Special Declarant Rights.*

The following “**Special Declarant Rights**” are also hereby reserved for the Declarant and its successors and assigns: to build and complete Improvements in or on the Property; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Property and sale of Lots; or to use easements through the Property for the purpose of making Improvements within the Property. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Property.

[NOTE: This section carries forward many of the rights reserved to the Declarant in Article 13, Section 13.1 of the Existing Declaration.]

Section 7.3 *Period of Declarant’s Rights.*

The Declarant may exercise any or all of its Development Rights or its Special Declarant

Rights at any time and from time to time. The Development Rights and the Special Declarant Rights shall terminate automatically at such time as the Declarant no longer owns any of the Property subject to this Declaration.

[NOTE: This section is similar to the Turnover Date defined in the Existing Declaration, but the time frame is only related to the time that the Declaration still owns property subject to the Amended and Restated Declaration.]

Section 7.4 *Subdivision or Replatting of Lots.*

The Declarant hereby reserves for itself and its successors and assigns the right to subdivide or replat any Lot(s) owned by the Declarant in the Property. Each such subdivision or replatting may change the number of Lots in the Property. The foregoing reservation includes the right to move any lot lines on Lots for the purpose of accommodating Improvements which are, or may be constructed. The rights reserved to the Declarant in this Section shall terminate automatically as provided in Section 7.3 of this Declaration.

[NOTE: This section is similar to the portion of Article 14, Section 14.2 of the Existing Declaration as the same relates to subdivision or replatting of lots.]

Section 7.5 *Annexation; Withdrawal.*

7.5.1 The Declarant reserves the right to add additional property to the Property and subject the same to this Declaration, so long as Declarant owns the property to be added, or with the consent of the owner of such property if not owned by the Declarant. Each annexation, if any, may be affected by the Declarant by recording an annexation document in the records of the Clerk and Recorder of Adams County, Colorado. The rights reserved to the Declarant in this Section shall terminate automatically as provided in Section 7.3 of this Declaration.

7.5.2 The Declarant reserves the right to withdraw the Property, or any portion thereof, including one or more Lots, from this Declaration, so long as the Declarant owns the portion of the Property to be withdrawn, or with the consent of the Owner of the property to be withdrawn if not owned by the Declarant. Each withdrawal, if any, may be affected by the Declarant recording a withdrawal document in the records of the Clerk and Recorder of Adams County, Colorado. A withdrawal pursuant to this Section constitutes a divestiture, withdrawal, and deannexation of the withdrawn property from this Declaration so that, from and after the date of recording of a withdrawal document, the property so withdrawn shall not be part of the Property. The rights reserved to the Declarant in this Section shall terminate automatically as provided in Section 7.3 of this Declaration.

[NOTE: This section is similar to Article 14, Sections 14.1 and 14.2 of the Existing Declaration.]

Section 7.6 *Rights and Easements of Declarant and Builders.*

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for the Declarant and any Builder (but only with the written consent of the Declarant), and their respective employees, agents, and contractors to perform such reasonable activities, and maintain Improvements, tools, equipment, and facilities incidental to development, construction, use, rental, sale, occupancy, and/or advertising on the portion of the Property owned by them in accordance with this Declaration and any other covenants, including, without limitation, any builder covenants, encumbering the Property. The foregoing includes locating, maintaining and relocating management offices, construction offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations on the portion of the Property owned by such parties. In addition, nothing contained in this Declaration shall limit the rights of the Declarant, or require the Declarant, to obtain approvals:

7.6.1 To excavate, cut, fill or grade any property (with the consent of the Owner thereof), or to construct, alter, demolish or replace any Improvements;

7.6.2 To use any Improvements on any Property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or

7.6.3 To seek or obtain any approvals under this Declaration for any such activity.

[NOTE: This section has been added.]

ARTICLE 8. GENERAL PROVISIONS

Section 8.1 *Powers and Authority.*

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

[NOTE: This section has been added.]

Section 8.2 *Rules and Regulations.*

Rules and Regulations affecting, concerning and governing the Lots and/or the Property may be adopted, amended or repealed from time to time as provided herein and the governing board of the District may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of Fines for the violation of any such Rules and Regulations. The Rules and Regulations, if any, may impose additional restrictions affecting, concerning and governing the Lots and/or the Property not otherwise provided for herein, and may state procedural requirements, interpretations, clarifications and applications of any provision(s) of this Declaration or the Design Guidelines and law, including blanket requirements, blanket interpretations, and blanket applications. The Rules and Regulations may vary for different types of Lots. Any Rules and Regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration and all provisions hereof.

[NOTE: This section grants the District the authority to adopt rules related to the property subject to the Amended and Restated Declaration, similar to the authority granted to the Association in Article 2, Section 2.2 of the Existing Declaration.]

Section 8.3 *Severability.*

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

[NOTE: This section is similar to Article 17, Section 17.4 of the Existing Declaration.]

Section 8.4 *Minor Violations of Setback Restrictions.*

If upon the erection of any structure or Improvement, it is disclosed by a 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 this the Governing Documents, if any. 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.

[NOTE: This section has been added.]

Section 8.5 *Duration, Revocation and Amendment.*

8.5.1 Each and every provision of this Declaration shall run with and bind the Property perpetually from the date of recording of this Declaration. This Declaration may be amended and/or supplemented by the affirmative vote or agreement of Owners of at least sixty-seven percent (67%) of the Lots subject to the Declaration, with each Lot having

one vote, and with the prior written consent of the District. In addition, any amendment to Article 7 of this Declaration or to any other provisions affecting the rights granted or reserved to the Declarant shall also require the written consent of the Declarant.

8.5.2 Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner or any other Person, in order to correct clerical, typographical or technical errors. Such right of amendment shall terminate automatically as provided in Section 7.3 of this Declaration.

8.5.3 No action to challenge the validity of this Declaration may be brought more than one year after the recording of this Declaration. Further, no action to challenge the validity of any amendment to this Declaration may be brought more than one year after the recording of such amendment.

[NOTE: This section is similar to Article 15 of the Existing Declaration, but removes any requirement for approval by lenders to any amendments to the Amended and Restated Declaration.]

Section 8.6 *Notices.*

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

[NOTE: This section is similar to Article 17, Section 17.7 of the Existing Declaration.]

Section 8.7 *Limitation on Liability.*

The Declarant, the District, the ARC, the Enforcement Committee, if any, and their respective directors, officers, shareholders, members, partners, agents and employees, shall not be liable to any Person for any action or for any failure to act arising out of the Governing Documents, if any, unless the action or failure to act was not in good faith and was done or withheld with malice. Further, neither the District, the ARC, nor the Enforcement Committee waives, and no provision of this Declaration is a waiver of, the immunities and limitations to which the District, the ARC and the Enforcement Committee, if any, have as a matter of law, including the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S., as amended. Any releases and waivers in this Declaration apply to this Section 8.7.

[NOTE: This section has been added.]

Section 8.8 *No Representations, Guaranties or Warranties.*

To the fullest extent permitted by Colorado law, the Declarant, the District, the ARC, the Enforcement Committee, if any, and their respective directors, officers, shareholders, members, partners, agents and employees, disclaim all warranties of any kind, express or implied, including, without limitation, any implied warranties of habitability, suitability, or fitness for a particular purpose, and no representations, guaranties or warranties of any kind, express or implied, including, without limitation, any implied warranties of habitability, suitability, or fitness for a particular purpose are given or made by the Declarant, the District, the ARC, the Enforcement Committee, if any, and any of their respective directors, officers, shareholders, members, partners, agents, and employees, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects in design or construction, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as specifically set forth in writing.

[NOTE: This section has been added.]

Section 8.9 *Disclaimer Regarding Safety.*

THE DECLARANT, THE DISTRICT, THE ARC, THE ENFORCEMENT COMMITTEE, IF ANY, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT THE FOREGOING ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.

[NOTE: This section has been added.]

Section 8.10 *District May Assign.*

The District may engage one or more third party independent contractors to carry out and enforce all or a portion of the provisions of the Declaration, the Design Guidelines, the Rules and Regulations and any supplemental documents and agreements related to the provision of covenant enforcement and design review services within the Property. Any such contractors shall be engaged under the sole direction and of control of the District.

[NOTE: This section has been added.]

Section 8.11 *Waiver.*

By acceptance of a deed to a Lot, each Owner releases, waives, and discharges the Declarant, the District, the ARC, and the Enforcement Committee, if any, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or property risks set forth in this Declaration.

[NOTE: This section has been added.]

Section 8.12 *Headings.*

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

[NOTE: This section is similar to Article 17, Section 17.6 of the Existing Declaration.]

Section 8.13 *Gender.*

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

[NOTE: This section is similar to Article 17, Section 17.8 of the Existing Declaration.]

Section 8.14 *Action.*

Any action that has been or may be taken by the Declarant, the District, the ARC, the Enforcement Committee, if any, or any other Person, may be taken “at any time, from time to time.” Each provision that authorizes, directs or permits action shall be deemed to include such language.

[NOTE: This section has been added.]

Section 8.15 *Sole Discretion.*

All actions which are to be taken by, or on behalf of, the Declarant, the District, the ARC, or the Enforcement Committee, if any, or any other Person, shall be deemed to be taken “in the sole discretion” of such Person.

[NOTE: This section has been added.]

Section 8.16 *Use of “Include,” “Includes,” and “Including.”*

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

[NOTE: This section has been added.]

Section 8.17 *No Waiver.*

No term or condition of this Declaration shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq. afforded to the District, the Enforcement Committee, if any, and/or the ARC.

[NOTE: This section has been added.]

Section 8.18 *Exemption.*

Notwithstanding anything in this Declaration to the contrary, (a) neither the Declarant, nor any of its activities shall in any way be subject to the control of, or under the jurisdiction of the District, the ARC or the Enforcement Committee, if any (including any Design Guidelines or Rules and Regulations), nor shall the Declarant be required to seek the approval or consent of the District, the ARC or the Enforcement Committee, if any, for any construction or other work to be performed by or on behalf of the Declarant in the Property and (b) nothing contained in this Declaration shall be construed to prevent or limit (i) the Declarant's exercise or enjoyment of any Special Declarant Rights or any other right of the Declarant under this Declaration or (ii) the conduct by the Declarant or its employees or agents, as applicable, of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of the Property or any other property. The Declarant, in its sole discretion, may also exempt a Builder from the provisions of Article 2, (a) as long as the Builder has received written design approval under the Design Guidelines from the Declarant, and/or (b) for activities which the Declarant deems to be incidental to the Builder's development activities, in the Declarant's sole and absolute discretion. This exemption terminates upon expiration of the Declarant's rights as provided in Section 7.3 of this Declaration.

[NOTE: This section has been added.]

Section 8.19 *Runs with the Land; Binding Upon Successors.*

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

[NOTE: This section is similar to Article 17, Section 17.10 of the Existing Declaration.]

Section 8.20 *District Lien.*

The lien of the District for any Fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District imposed pursuant to Section 32-1-1001, C.R.S. is not subject to the provision of any homestead exemption as allowed under state or federal law.

The acceptance of a deed to a Site subject to this Declaration shall constitute a waiver of the homestead exemption as against said lien.

[NOTE: This section has been added.]

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IN WITNESS WHEREOF, this Declaration is executed by the undersigned.

BRIGHTON CROSSING MASTER HOMEOWNERS ASSOCIATION, INC.
a Colorado nonprofit corporation

By: _____
President

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ as President of Brighton Crossing Master Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: _____

Notary Public

CONSENT OF THE DECLARANT

IN WITNESS WHEREOF, in accordance with Article 15, Section 15.4 of the Original Declaration, Brookfield Residential (Colorado), LLC, a Nevada limited liability company, and the successor to Carma Colorado, Inc, the declarant under the Original Declaration, hereby approves the Amended and Restated Master Declaration for Bright Crossing.

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of Brookfield Residential (Colorado), LLC.

Witness my hand and official seal.
My commission expires: _____

Notary Public

EXHIBIT A
The Property