

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

FOR

TIMNATH SOUTH SUBDIVISION

Declarant: Timnath Farm Investments, LLC, a Colorado Limited Liability Company
Metropolitan District: South Timnath Metropolitan District No. 1

When recorded, return to:

✓ Allen, Vahrenwald & Johnson, LLC
125 South Howes, Suite 1100
Fort Collins, CO 80521

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**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR TIMNATH SOUTH SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR TIMNATH SOUTH SUBDIVISION (the "Declaration") are made and entered into to be effective as of the 1st day of August, 2007 by TIMNATH FARM INVESTMENTS, LLC, a Colorado limited liability company ("Declarant"), upon the following terms and conditions:

RECITALS

WHEREAS, Declarant is the owner and/or Developer of that certain real property located in Larimer County, Colorado, within the Town of Timnath, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, as supplemented and amended from time to time, (the "Property")¹; and

WHEREAS, Declarant desires to create a system of covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Property and Improvements to be developed thereon, which shall be known as the Timnath South Subdivision (the "Development"); and

WHEREAS, the covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other charges set forth herein are in addition to the laws of any and all applicable governmental entities with jurisdiction over the Property, including but not limited to the Town of Timnath and Larimer County, Colorado; and

WHEREAS, Declarant desires that all Property shall be improved, held, used, occupied, leased, sold, and/or conveyed subject to this Declaration; and

WHEREAS, the South Timnath Metropolitan District No. 1 (the "Metropolitan District," as hereinafter more fully defined) was organized under the laws of the State of Colorado pursuant to the Consolidated Service Plan for South Timnath Metropolitan Districts Nos. 1, 2 & 3 dated December 15, 2005 and revised and resubmitted January 12, 2006, approved by the Board of Trustees of the Town of Timnath on January 18, 2006 (the "Service Plan"), which Metropolitan District shall, pursuant to Section 32-1-1004 (8) of the Colorado Revised Statutes, enforce the covenants, conditions, restrictions, easements, and provide design review services as set forth herein, for that certain real estate and Improvements in the County of Larimer, State of Colorado,

¹ A portion of the Property currently is owned by Melody Homes, Inc., a Delaware corporation d.b.a. D.R. Horton – Melody Series ("D.R. Horton") and by various other lot owners. By signature below, D.R. Horton and the other lot owners hereby consent to subject their portion of the Property to the covenants, conditions, restrictions and easements described herein, which shall run with the land and be binding on the D.R. Horton Owners and other lot owners, their heirs, successors, and assigns having any right title or interest in all or any part of the portion of the Property currently owned by the D.R. Horton Owners and the other lot owners.

which is described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the representatives of the Districts submitted to the Town Council an Amended and Restated Consolidated Service Plan for South Timnath Metropolitan Districts Nos. 1 & 2 ("Amended and Restated Service Plan") dated July 19, 2007 which combines the property intended to comprise the original South Timnath Metropolitan Districts Nos. 2 and 3 into South Timnath Metropolitan District No. 2, adopts language changes to update the Service Plan to the current Town approved format and content but does not change the service area, outer boundaries, or material provisions, powers or authorities provided for in the original Service Plan of the Districts. The Town Council will consider the approval of the Amended and Restated Service Plan of the Districts by Resolution on August 8, 2007; and

WHEREAS, this Declaration shall run with the land and be binding on and inure to the benefit of all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-kind, and assigns; and

WHEREAS, Declarant further hereby states that the Metropolitan District shall maintain, care for and manage the Metropolitan District owned portions of the Property and related Metropolitan District Improvements from time to time, and perform certain functions for the benefit of the Owners as further described herein and within the Service Plan. This Declaration shall also define certain duties, powers, and rights of the Owners, Declarant, and Metropolitan District; and

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

NOW, THEREFORE, in addition to the foregoing, the Declarant for itself, its successors and assigns, and for and on behalf of all existing Owners, hereby declares that the Property and any Future Parcel(s) which is annexed to this Declaration in the manner provided for herein shall, from the date it so becomes annexed be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions set forth above and herein, as the same may be amended and/or supplemented from time to time; provided that the provisions of this Declaration and its Covenants shall apply only to those portions of the Property actually used for residential purposes or designated for such use.

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Plat of the Property shall have the meanings provided in the following sections of this Article:

1.1.1 “Affiliate” means any and all partnerships, ventures, limited liability companies or other entities in which the Declarant owns or any of the entities comprising the Declarant owns, either directly or indirectly, a controlling interest.

1.1.2 “Agent” means a person, firm, corporation or other entity employed or engaged as an independent contractor by the Declarant or Metropolitan District.

1.1.3 “Annexed Property” means any Future Parcel(s) or portion thereof, which is annexed to this Declaration by means of a Supplemental Declaration.

1.1.4 “Architectural Control Committee” or “ACC” shall mean and refer to the committee created pursuant to the terms of this Declaration established to review and approve plans for the construction or alteration of Improvements on Lots as set forth in Article 2 of this Declaration.

1.1.5 “Board of Directors” or “Board” means the Board of Directors of the South Timnath Metropolitan District No. 1, its successors and assigns.

1.1.6 “Covenants” means the covenants, conditions, restrictions and easements of South Timnath contained in this Declaration, as amended and supplemented from time to time.

1.1.7 “Declarant” and “Developer” means TIMNATH FARM INVESTMENTS, LLC, a Colorado limited liability company, and/or any other Person to whom the Declarant may, at any time from time to time, assign one or more of the Declarant’s rights (which shall be the extent of the Declarant’s rights to which such assignee succeeds); provided, that no assignment of any Declarant rights shall be effective unless such assignment is duly executed by the assignor Declarant and recorded in Larimer County, Colorado. The term “Declarant” as used herein includes any entity that results from reorganization or restructuring of the existing entity or the conversion thereof to another form of entity. For purposes of determining which Lots or Future Parcels are owned by Declarant, “Declarant” shall automatically be deemed to include “Affiliates” as that term is defined in this Article 1.

1.1.8 “Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for South Timnath, as amended and supplemented from time to time.

1.1.9 “Dedicated Easements” shall mean the utility and/or drainage easements granted through the Property to the appropriate governmental entity or public utility for providing utility service or drainage facilities to the Property.

1.1.10 “Development” shall mean the Timnath South Subdivision development subject to this Declaration, consisting of the Property described in Exhibit A attached hereto and incorporated herein by this reference, as supplemented and amended from time to time. The Development is intended to be the property within the boundaries of South Timnath Metropolitan Districts Nos. 1 and 2 and all future Annexed Property.

1.1.11 "District Properties" means all real and personal property including any Improvements, common areas, facilities and related appurtenances, now or hereafter owned by the Metropolitan District, or with respect to which the Metropolitan District holds an easement for the use, care or maintenance thereof held for the common use and enjoyment of certain of the Owners, or certain Owners, as the case may be, and for other purposes as may be permitted hereunder.

1.1.12 "Future Parcels" means and refers to any real property adjacent to the Property or in its vicinity which the Declarant identifies as annexable to this Declaration or included into the Development, in any recorded document executed by it which refers to this Declaration, as hereafter provided. Future Parcels need not be owned by Declarant so long as the Owner thereof consents to the potential annexation of such real estate to this Declaration. Future Parcels may be added to this Declaration by the Declarant, provided such Future Parcels are properly annexed to the Town of Timnath, included within one of the South Timnath Metropolitan Districts, and provided such inclusion is in accordance with law and any Service Plan or Town requirements.

1.1.13 "Governing Board" means the governing board of South Timnath Metropolitan District No. 1.

1.1.14 "Guidelines" shall mean the guidelines and rules published, and as amended and supplemented from time to time in accordance with the terms therein, by the Architectural Control Committee.

1.1.15 "Improvement(s)" shall mean and include the following: (a) the construction, installation, alteration, demolition in whole or in part, or expansion of any exterior improvement, building, structure, appurtenance, or other improvements, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sidewalks, trails, bridges, sprinkler systems, garages, driveways, parking areas, fences, including gates in fences, basketball backboards and hoops, swing-sets or other play structures, screening walls, retaining walls, stairs, decks, exterior light fixtures, poles, signs, exterior tanks, utilities, facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any; (b) the staking, clearing, grading, excavation, filling or similar disturbance to the surface of the land, including without limitation any change of grade, change of ground level, change of drainage pattern, or change of stream bed or course, ditch improvements, drainage, retention and detention ponds or facilities, storm sewer and other collection facilities; (c) all initial planting of and subsequent material modifications to landscaping, hedges, windbreaks, berming, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, and all planting, clearing or removing of trees, shrubs, grass or perennial plants, but in each instance excluding removal of dead or diseased plants and trees and excluding any replacement that is substantially similar to the item being replaced; (d) any change or alteration to the exterior appearance of Improvements previously approved by the ACC, including any change in finish material, color or texture; (e) the repainting and resurfacing of exterior surfaces of structures, including roofing materials, gutters, downspouts, drainspouts, exterior siding or stucco finish, entry doors, windows, trim around doors and windows, surfaces of garage doors, external vents and flues and glass surfaces, exclusive of any replacement

that is substantially identical to the item being repainted or resurfaced; and (f) reconstruction of any structures.

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

1.1.17 "Metropolitan District" or "District" means the South Timnath Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado, its successor or assign, and/or any other metropolitan district(s) to whom the then-Metropolitan District may, from time to time, transfer or assign any or all of the rights, duties obligations, and responsibilities delineated in this Declaration. Each such assignment or transfer, if any, shall be effective upon recording in Larimer County, Colorado, of a document of transfer or assignment, duly executed by the then-Metropolitan District. In the event that Metropolitan District ceases to exist, Declarant may appoint a successor entity to serve as enforcer of this Declaration, which entity shall assume all rights and responsibilities of the Metropolitan District under this Declaration.

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

1.1.19 "Period of Declarant Control" shall mean that period of time in which the Declarant is entitled to enforce, amend, revise and/or supplement this Declaration, promulgate rules and regulations subject to this Declaration, and appoint members of the Architectural Control Committee. The Period of Declarant Control will continue to run from the date of the recording of this Declaration and will end 20 years from the date of recordation hereof.

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

1.1.21 "Project Documents" means this Declaration, rules and regulations, Guidelines and any documents now or hereafter adopted by or for the Metropolitan District, as amended or supplemented from time to time.

1.1.22 "Property" means the real estate described on the attached Exhibit A, and any Future Parcel(s), or portion thereof, which has been annexed hereto by a Supplemental Declaration or otherwise as provided herein; all of which may be supplemented and amended from time to time, as the same may now or hereafter be improved, and as the Declarant may now or hereafter subdivide or resubdivide any portion thereof; provided, however, that the Property shall include any real estate and Improvements that are annexed and shall not include any real estate or Improvements that have been withdrawn, as provided in this Declaration.

1.1.23 “Supplemental Declaration” shall mean a declaration or covenants recorded by Declarant, with respect to any Future Parcel, or portion thereof, which annexes such parcel to the terms of this Declaration. A Supplemental Declaration may establish additional covenants, conditions and restrictions applicable to such portion of real property, may contain exceptions, deletions or modifications from the covenants, conditions, restrictions and easements contained herein applicable to such portion of real property. Any recorded document which establishes or creates a declaration or covenant shall be deemed to be a Supplemental Declaration for the purposes of this Declaration, whether or not it is labeled or identified as such.

1.1.24 “Town” shall mean the Town of Timnath, Colorado.

1.1.25 “Utility Easements” shall mean the reciprocal, nonexclusive easements for the purpose of providing utility easements granted pursuant to this Declaration or which may be created and identified as such in a Supplemental Declaration or other recorded document executed by Declarant and the then Owner of a Lot.

Section 1.2 Other Terms in Covenants. Other terms in this Declaration may be defined in specific provisions contained herein and shall have the meaning assigned by such definition.

ARTICLE 2. DESIGN AND/OR ARCHITECTURAL REVIEW

Section 2.1 Appointment of Members to ACC. The members of the Architectural Control Committee shall be appointed by the Governing Board. There shall initially be three (3) members of the ACC, namely Dino DiTullio, Michael DiTullio, and Glenn Nier. Members of the ACC may be, but need not be, directors of the Governing Board.

Section 2.2 Term. Each member of the ACC shall serve at the pleasure of the Governing Board. In the event of the death, incapacity, or resignation of any member of the ACC, the Governing Board shall appoint a successor.

Section 2.3 Design Review Requirements.

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

2.3.2 The ACC shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the

ACC may require as a condition to its considering an approval request that the applicant(s) pay or reimburse the ACC for the expenses incurred by the ACC in the review process.

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

2.3.4 The Governing Board of the Metropolitan District may at any time, from time to time, appoint a representative to act on its behalf. If the Governing Board does so, then the actions of such representative shall be the actions of the Governing Board, subject to the right of appeal as provided below. However, if such a representative is appointed by the Governing Board, then the Governing Board 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 Governing Board and the power to at any time remove or replace such representative.

2.3.5 In addition to the foregoing Sections, the ACC shall likewise have the power to delegate the responsibility for reviewing any application submitted to the ACC to a professional architect, landscape architect, engineer, or other professional Person who is qualified to review the issues raised in the application. The ACC shall also have the power to require that the applicant pay the fees reasonably incurred by the ACC in retaining such professional to review the application submitted.

Section 2.4 Guidelines. The Governing Board of the Metropolitan District is authorized to promulgate design and/or architectural standards, rules, regulations and/or guidelines (collectively the "Guidelines"). Any such Guidelines may be included in rules and regulations promulgated by the Metropolitan District as set forth in Section 6.1 of this Declaration ("Rules and Regulations"). Without limiting the generality of the foregoing, such Guidelines may contain provisions to clarify the designs and materials that may be considered in design approval, may state requirements for submissions, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the ACC. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval, or may state that only one or more types of fences are acceptable and no other types will be approved. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration.

Section 2.5 Procedures. The ACC shall approve or disapprove all requests for approval within forty-five (45) days after the complete submission of all plans, specifications, and other materials and information which the ACC may require in conjunction therewith. A stamped or printed notation, initialed by a member of the ACC, affixed to any of the plans and specifications, shall be deemed a sufficient writing. However, the ACC shall not be required to maintain records

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

Section 2.6 Voting and Appeals. A majority vote of the ACC is required to approve a request for architectural approval or any other matter to be acted on by the ACC, unless the ACC 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 ACC decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full ACC, upon a written request therefor submitted to the ACC within ten (10) days after such decision by the ACC's representative. In the event the ACC decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Governing Board, upon a written request therefor submitted to the Governing Board within ten (10) days after such decision by the ACC. Notwithstanding anything to the contrary in this Declaration, the Governing Board may intercede of its own volition in matters of architectural approval by the ACC, and the Governing Board may reverse, alter, amend, adjust, change, or otherwise modify any decisions of the ACC at any time, so long as any one or more Owners are not unduly prejudiced thereby.

Section 2.7 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application or to complete the Improvement in complete conformance with the conditions and requirements of the approval, shall constitute noncompliance with the requirement that approval for Improvements be obtained from the ACC; provided, however, the ACC, in its discretion, may grant extensions of time for completion of any proposed Improvements.

Section 2.8 Notice of Completion. Upon the completion of any Improvement, the applicant for approval of the same shall give a written "Notice of Completion" to the ACC. Until the date of receipt of such Notice of Completion, the ACC shall not be deemed to have notice of completion of any Improvement on which approval has been sought and granted as provided in this Article.

Section 2.9 Inspection of Work. The ACC or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion in order to determine whether the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article; provided, however, that the right of inspection shall terminate sixty (60) days after the ACC shall have received a Notice of Completion from the applicant.

Section 2.10 Notice of Noncompliance. If, as a result of inspections or otherwise, the ACC finds that any Improvement has been done without obtaining the approval of the ACC, or was not done in substantial compliance with the approval that was granted, or was not completed within

one (1) year after the date of approval, subject to any extensions of time granted pursuant to Section 2.7 hereof, the ACC shall notify the applicant in writing of the noncompliance; which notice of noncompliance shall be given, in any event, within sixty (60) days after the ACC receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance.

Section 2.11 Correction of Noncompliance. If the ACC determines that a noncompliance exists, the Person responsible for such noncompliance shall remedy or remove the same (and return the subject real estate and/or Improvements or structure to its original condition) within a period of not more than forty-five (45) days from the date of receipt of the notice of noncompliance. If such Person does not comply with the ruling within such period, the ACC may, at its option, record a notice of noncompliance against the Lot on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the Person responsible for such noncompliance shall reimburse the ACC, upon demand, for all costs and expenses incurred with respect thereto.

Section 2.12 Cooperation and Delegation. The Governing Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, any other architectural review committees, or one or more other boards or committees, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Governing Board in its discretion. The costs and expenses for all such matters, if any, shall be shared or apportioned between such other boards or committees and the Metropolitan District, as the Governing Board may determine in its discretion from time to time. Additionally, the Governing Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, other architectural review committees, or one or more other boards or committees, to collect fees, charges, or other amounts which may be due to such entity and to permit any such entity to collect fees, charges, or other amounts which may be due to the Metropolitan District; in any such instance, the Governing Board shall provide for remittance to such entity of any amounts collected by the Governing Board or to the Metropolitan District of any amounts collected by such entity.

Section 2.13 Access Easement. Each Lot is subject to an easement in favor of the ACC and the Metropolitan District, including their agents, representatives, employees and contractors thereof: for performing any of the actions contemplated in this Declaration, including without limitation Sections 2.9 and 2.11 hereof; and/or for and incidental to investigation and/or enforcement of any term or provision of any of the Project Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any of the Property, including without limitation any Lot, the Owner responsible for the damage or expense to avoid damage, or the Metropolitan District if it is responsible, is liable for the cost of prompt repair and remediation. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive matter; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably

possible. The interior of any residence located on a Lot shall not be subject to the easements provided for in this Section.

Section 2.14 No Liability. The Metropolitan District, the Governing Board, the ACC, and the members thereof, as well as any representative of the Metropolitan District, the Governing Board and the ACC appointed to act on its behalf, shall not be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter within its jurisdiction hereunder. In reviewing any matter, the Metropolitan District, the Governing Board, and the ACC shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor compliance with any other standards or regulations, and any approval of an Improvement by the Metropolitan District, the Governing Board, or the ACC shall not be deemed an approval of any such matters. No Owner or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Metropolitan District, the Governing Board, or the ACC.

Section 2.15 Variance. The ACC, in its sole discretion, may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other real estate and Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 2.16 Waivers; No Precedent. The approval or consent of the ACC, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

ARTICLE 3. RESTRICTIONS

Section 3.1 Restrictions Imposed. The Property is subject to all requirements, covenants, restrictions and other matters stated on the recorded plats of the Property, or any portion thereof, as well as all other applicable documents. In addition, the Declarant declares that all of the Property shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. In addition, no unlawful use shall be permitted or made of the Property or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Property, or any portion thereof, shall be observed.

Section 3.2 Residential Use; Professional or Home Occupation. Lots shall be used for residential use only, including uses which are customarily incidental thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

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

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

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

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

3.2.5 the business conforms to this Declaration and the Guidelines, as well as any rules and regulations that may be imposed by the Metropolitan District, the Governing Board or the ACC from time to time.

Section 3.3 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Property; provided, however, that the Owners and residents of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Property. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed and accompanied by the Owner or his or her representative, who shall be responsible for collecting and properly disposing of any animal waste. The ACC shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; or that an Owner or resident is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to household pets; or that an Owner or resident is otherwise in violation of the provisions of this Section. In any such case, the ACC may take such action(s) as it may deem appropriate. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred as a result of such pets.

Section 3.4 Temporary Structures; Unsightly Conditions. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a tent, shack, storage shed, or outbuilding, shall be placed or erected; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary

temporary structures for storage of materials may be erected and maintained by the Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on the Property as to be visible from a street or any other portion of the Property. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its agents, employees, and contractors, or a builder with the express written approval of the Declarant, to maintain during the period of construction and sale of any Lots, upon such portion of the Property as Declarant may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale or rental of Lots, including, without limitation, a business office, storage area, construction yard, signs, model homes, sales office, construction office, parking areas, and lighting.

Section 3.5 Miscellaneous Requirements and Improvements.

3.5.1 *Minimum Square Footage.* The minimum living area, exclusive of garages, balconies, patios, porches, and the like, of any residence constructed on a Lot within the Property shall be 1600 square feet for a ranch floor plan, and 1800 square feet for a multi-level floor plan.

3.5.2 *Color of Exterior Materials.* The color of all exterior materials used on a residence or other Improvements within the Property must be approved in advance by the ACC. Earthtones generally muted are recommended.

3.5.3 *Masonry Accents.* As used herein, "Masonry Accents" shall be restricted to stone, brick or stucco (with no rottled patterns), and shall be subject to the following requirements:

(a) Masonry Accents shall be mandatory on the front of any residence constructed within the Property. A minimum of 25% of the front of the residence must be comprised of Masonry Accents.

(b) If stone or brick are used on the front of any residence within the Property, the stone or brick shall be extended a minimum of two (2) feet on both sides of the residence at the same height as the brick or stone on the front of the residence.

(c) Lap board siding must have a maximum exposed board width of 9 inches. All fascias shall be a minimum of 6 inches and all soffits shall be a minimum of 12 inches. Lap board siding that faces the front of any residence must have a maximum exposed board width of 6 inches.

3.5.4 *Roofing Materials.* Except as otherwise provided herein, roofing materials within the Property shall be restricted to tile, slate, or 30 year dimensional asphalt shingles. Cement tile or metal roofs may be approved by the ACC, provided such materials are necessary to the architectural style of the residence and are an approved color. Standard asphalt shingles are NOT acceptable within the Property.

