

PROTECTIVE COVENANTS

THE HIGHLANDS IN PARADISE

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**PROTECTIVE COVENANTS
THE HIGHLANDS IN
PARADISE**

THESE PROTECTIVE COVENANTS OF THE HIGHLANDS IN PARADISE ("Covenants") are made and entered into the date and year hereinafter set forth by Mark 2, LLC and North Peak Properties, LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the representative of the owner (being North Peak Properties, LLC, a Colorado limited liability company) of that certain real property in the County of Teller, State of Colorado, which is described as The Highlands in Paradise, Lots 1 through 9 inclusive, ("Property"); and

WHEREAS, the Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions; and

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

WHEREAS, pursuant to C.R.S. §32-1-1004(8)(a), it is the intention of the Declarant, in imposing these Covenants on the Property, to empower the Paradise of Colorado Metropolitan District, a metropolitan district that governs the Property, to furnish covenant enforcement and to pay for such services with Metropolitan District revenues derived from the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions set forth herein.

**ARTICLE 1.
DEFINITIONS**

Section 1.1. *Architectural Control Committee.*

"Architectural Control Committee" ("ACC") means the committee appointed by these covenants that will review and consider all proposed Improvements to Lots. The ACC must include developer representative of Mark 2, LLC. The Declarant is the sole governing board of the ACC but the Declarant may add others to the Board from time to time. See Section 2.10.

Section 1.2. *Builder.*

"Builder" means the Declarant who acquires a Lot for the purpose of constructing a residential improvement on such Lot for himself, or for sale to the public, or as contracted by a Lot Owner. All Builders shall be approved by the Declarant. Declarant has the sole right to be the only builder during the Development Period and subsequent thereto.

Section 1.3. *Covenants.*

"Covenants" means these Protective Covenants, as amended and supplemented from time to time.

Section 1.4. *Declarant.*

"Declarant" means Mark 2, 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 under these Covenants (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 Teller County, Colorado any assignment by the Declarant must be approved by the owner of property described in Section 1.10, or by owner's representative(s).

Section 1.5. *Improvements.*

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

Section 1.6. Lot.

"Lot" means each platted lot that is now or hereafter included in the Property described in Section 1.10.

Section 1.7. Metropolitan District.

"Metropolitan District" means Paradise of Colorado Metropolitan District, and/or any other metropolitan district, to which the then-Metropolitan District may, from time to time, transfer or assign any or all of the rights and duties of the Metropolitan District under these Covenants. Each such assignment or transfer, if any, shall be effective upon recording in Teller County, Colorado, of a document of transfer or assignment, duly executed by the then-Metropolitan District.

Section 1.8. *Owner.*

"Owner" means each fee simple title holder of a Lot, including without limitation 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.

Section 1.9. *Person.*

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

Section 1.10. *Property.*

"Property" means the real estate described as The Highlands in Paradise, Lots 1 through 9 inclusive.

Section 1.11. *Development Period.*

“Development Period” means the period that commenced upon Declarant gaining ownership of the Property and continues until building has been completed upon 95% of the Lots as defined in Section 1.10.

**ARTICLE 2.
DESIGN REVIEW**

Section 2.1. *Design Review Requirements.*

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 these Covenants and the Guidelines (as hereinafter defined), if any, and unless at least two (2) sets of complete plans and specifications therefore (said plans and specifications to show exterior design, height, all materials, all colors, 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 any such other materials and information as may be required by the Architectural Control Committee of The Highlands in Paradise. Complete Plans and Specifications must be submitted to and approved in writing by the Architectural Control Committee.

The Architectural Control Committee 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 Architectural Control Committee 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 ACC in the review process.

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 thereof, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of zoning development permit(s) ("ZDP") by the City of Woodland Park, Colorado, and Building Permits, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

Section 2.2 *Guidelines.*

The governing board of the Architectural Control Committee, has the authority to promulgate architectural standards, rules, regulations and/or guidelines (collectively the "Guidelines") to interpret and implement the provisions of this Article and these Covenants. Without limiting the generality of the foregoing, such provisions may contain provisions to clarify the designs and materials that may be considered in design approval, may state requirements for submissions, and may state procedural requirements. In addition, such provisions may provide for blanket approvals, interpretations, or restrictions. Track Type Home designs will not be accepted. By way of example, and not by way of limitation, such provisions may state that a certain type of Evergreen Tree will be acceptable and will not require approval, or a particular type and color of a retaining wall will be acceptable. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be promulgated and implemented in accordance with these Covenants.

Section 2.3. *Design Standards.*

The minimum design standards applicable to all Lots in the Property include:

2.3.1 Setbacks. All Improvements shall be located a minimum of 12 feet from all side property lines except for where there are recorded utility easements that are greater than 12 feet from side property lines. All improvements shall be located 25 feet from front and rear property lines.

2.3.2 Landscaping. All disturbed areas shall be restored and or improved. A minimum of four (4) evergreen trees or aspen trees maintained on the front fifty (50) feet of each lot as measured from the curb at all times. Each tree shall be a minimum of seven (7) feet in height for evergreen trees and fifteen (15) feet in height for aspen trees.

2.3.3 Roof Types. All roof material shall be Tile; natural, clay, or concrete or minimum Lifetime HD architectural shingles to be approved by the ACC.

2.3.4 Driveways. The first fifty (50) feet of all driveways shall be broom concrete with border design. Walkways shall be brushed concrete. Additional materials that can be used in combination with the foregoing are colored and stained concrete, exposed aggregate, stamped concrete, and stone.

2.3.5 Exterior Finishes. A minimum of twenty percent of the exterior of the Improvements will be natural or manufactured stone. Flexibility will be given with design as to the location of the twenty percent. The balance of the materials including the garage doors must have a custom finish and be approved by the Architectural Control Committee. All windows can be insulated vinyl clad frames or metal clad. All metal and/or concrete surfaces must be finished.

2.3.6 Improvement Sizes. Single family residences must have a minimum of 2,400 finished sq. ft. and a minimum 2 car garage. Each individual residence shall have unique architectural features as approved by the Architectural Control Committee.

2.3.7 Fences. Fences are not allowed. A small dog run in an area obscured from the roadways and not obtrusive to adjacent Lots may be installed with the approval of the Architectural Control Committee.

Section 2.4. *Declarant's Exemption.*

The Declarant shall be exempt from the provisions of these Covenants which exemption shall terminate upon the expiration of the Development Period, if Declarant so chooses.

Section 2.5. *Procedures.*

The Architectural Control Committee shall approve or disapprove all applications within thirty (30) days after the submission of complete plans, specifications, and other materials and information which the ACC may require in conjunction therewith. A stamped or printed notation, initialed by an authorized 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 30 days shall be deemed disapproval. **The Declarant has final approval as part of the ACC for all dwelling designs and house placement on any lot.**

Section 2.6.***Proceeding After Approval.***

After approval of any proposed Improvement, construction or installation of the proposed Improvement shall be commenced 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 failure 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 Architectural Control Committee. The ACC or the governing board of the ACC as provided herein, in their discretion, may consider requests for extensions of time for completion of any proposed Improvements. The Declarant is the sole governing board of the ACC. See Section 2.10.

Section 2.7.***Notice of Completion.***

Upon the completion of any Improvement, the applicant shall give a written "Notice of Completion" to the Architectural Control Committee. Upon receipt of the "Notice of Completion", the ACC will inspect the exterior of the Improvements and Lot and ascertain whether the construction and/or installation is in compliance with the approved plans and specifications. The applicant will be provided a written response to the "Notice of Completion" within a reasonable period.

Section 2.8.***Inspection of Work.***

The Architectural Control Committee or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article; provided, however, that the right of inspection shall terminate sixty (60) days after the Architectural Control Committee receives the Notice of Completion.

If, as a result of inspections or otherwise, the Architectural Control Committee finds that any Improvement has been installed or constructed without obtaining the approval of the Architectural Control Committee, or was not installed or constructed 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 Architectural Control Committee shall notify the applicant in writing of the noncompliance. The notice of non-compliance shall specify the particulars of the noncompliance.

Section 2.9.***Correction of Noncompliance.***

If the Architectural Control Committee determines that noncompliance exists, the Person responsible for such noncompliance shall remedy or remove the same (and return the subject property or structure to its original condition) within a period of not more than forty-five (45) days from the date of receipt of the notice of noncompliance. If such Person does not comply with the ruling within such period, the Architectural Control Committee may, at their 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 including attorney's fees and court costs.

Section 2.13. *Variance.*

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

Section 2.14. *Waivers; No Precedent.*

The approval or consent of the governing board of the Metropolitan District or 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 governing board 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 on all other documents recorded in the office of the Clerk and Recorder of Teller County, Colorado, as amended. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, and resided upon, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in these Covenants. Notwithstanding anything to the contrary, any of the provisions, conditions, limitations, restrictions agreements or covenants contained in these Restrictions may hereafter be modified or supplemented in any respect as to any portion(s) of the Property by one or more documents that are approved in writing, in advance, by the governing board of the Metropolitan District, the ACC and the Declarant recorded in Teller County, Colorado.

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

Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Builders that have received design approval, may as part of the approval process, use the home as a model home for a period not to exceed two years and are exempt from this Section 3.2. 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 signs indicating that a business is being conducted;

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 the Guidelines as well as any rules and regulations that may be imposed by the governing board of the Metropolitan District and/or the ACC from time to time on a uniform basis.

Section 3.3. *Household Pets.*

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; 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 Lots. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed and accompanied by the Owner or his or her representative, who shall be responsible for collecting and properly disposing of any animal waste. The governing board of the Metropolitan District shall have, and is hereby given, the right and authority to 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 governing board of the Metropolitan District may take such action(s) as it may deem appropriate. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred as a result of such pets.

Section 3.4. *Temporary Structures; Unsightly Conditions.*

Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials and portable bathrooms 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 any Lot as to be visible from a street or from any other Lot.

Section 3.5. *Miscellaneous Improvements.*

3.5.1 No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant, a street number, and/or a security sign as approved by the Architectural Control Committee. The sole exception would be for a "For Sale", "Open House", or "For Rent" sign of not more than six (6) square feet in the aggregate. Notwithstanding the foregoing, signs, by any Builder with the express written consent of the Architectural Control Committee, in connection with the use of the Lot as a Model Home, shall be permissible.

3.5.2 No permanently affixed clotheslines, drying yards, service yards, wood piles or storage areas shall be permitted on any Lot.

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

3.5.4 Except as may otherwise be permitted by the Architectural Control Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view. Provided further, however, that the requirements of this subsection shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Tele-communications Act of 1996 and/or applicable regulations, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Tele-communications Act of 1996 and/or applicable regulations, as amended, the governing board of the Metropolitan District shall be empowered to adopt rules and regulations governing the types of "antenna" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or applicable regulations, as amended, and establish reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

3.5.5 No wind generators shall be constructed, installed, erected or maintained on any Lot.

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

Except as otherwise provided in the rules and regulations which may be adopted by the governing board of the Metropolitan District from time to time, vehicles shall be parked only in the garages or in the driveways serving the Lots. Parking on streets is prohibited except for the temporary visitation (4 hours). A vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. Vehicles shall be subject to such reasonable rules and regulations as the governing board of the Metropolitan District may adopt from time to time. Except as may otherwise be set forth in the rules and regulations or Guidelines, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, recreational vehicles, golf carts and boat trailers, shall be parked only in enclosed garages. This restriction, however, shall not restrict trucks or commercial vehicles which are necessary for construction or for the maintenance of any portion of the Property

or any Improvements located thereon, nor shall such restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted in the Property except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for twenty-four (24) consecutive hours without the prior approval of the governing board of the Metropolitan District.

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

No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Property unless it is done within the enclosed garage and screened from sight and sound of the activity from the street and from adjoining property. Any Owner or other Person undertaking any such activities shall be solely responsible for, and assumes all risks of, such activities, including adoption and utilization of any and all necessary safety measures or precautions, including but not limited to, ventilation. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle on a Lot, together with those activities normally incident and necessary to such washing and polishing.

Section 3.7. *Nuisances.*

No nuisance shall be permitted which is visible within or otherwise affects any portion of the Property, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the term "nuisance" shall include each violation of these Covenants and the Guidelines, if any, but shall not include any activities of the Declarant. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, 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 3.8. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted on any Lot or within Improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within a dedicated fire pit or interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such

limited quantities so as to not constitute a hazard or danger to person or property. A Lot Owner shall be responsible for remediating damage to or staining (by oil, grease or other chemical) of the street and driveway pavers to the extent caused by said Lot Owner or by any guest, invitee, vendor or contractor of the Lot Owner.

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

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

Section 3.10. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall such items be deposited on a street, unless placed in a suitable, tightly-covered container that is reasonably located solely for the purpose of garbage pickup; provided, however, no such container may be deposited on a street for garbage pickup prior to 5:00 a.m. on the day such garbage will be picked up. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. In accordance with Section 3.4 hereof, each Lot shall at all times be kept in a clean and slightly condition by the Owner(s) thereof.

Section 3.11. *Landscaping.*

All areas disturbed by the building process shall be restored. A preliminary landscape plan shall be part of the submittal of Plans and Specifications. At the 50% completion stage, the final landscape plan shall be submitted to the Architectural Control Committee. All landscaping must be completed by August of the year following that in which construction commenced. Any additional landscaping plans must be submitted to the Architectural Control Committee for review, and the approval of such plans shall be obtained from the ACC prior to the installation of landscaping. Each Owner shall maintain all landscaping on such Owner's Lot in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds and debris, and replacement of landscaping. The Property is particularly vulnerable to insect infestation to include Pine Beetle, Moths, Mistletoe, and other Fungi. Periodic maintenance including spraying and prevention is critical to the health of the trees. Removal of infected or diseased trees shall be the responsibility of the Lot Owner. A minimum of four (4) evergreen trees or aspen trees shall be maintained in the front 50 feet of each lot, as measured from the curb, with a minimum height of seven (7) feet each for evergreen trees or fifteen (15) feet for aspen trees.

Section 3.12. *Maintenance of and Non-Interference with Grade and Drainage.*

Each Owner shall maintain the grading upon his Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner agrees that he will not in any way interfere with the established drainage pattern on his Lot. In the event that it is

necessary or desirable to change the established drainage over any Lot, then the Owner thereof shall submit a plan to the Architectural Control Committee for its review and approval, in accordance with the provisions of Article 2 of these Covenants and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time of final grading of a Lot by the Declarant.

Section 3.13. *Erosion Control.*

The storm water program throughout the United States arises from the Clean Water Act of 1972 and regulations established by the U.S. Environmental Protection Agency, as well as other laws and regulations. These requirements may be implemented and expanded through state and local regulations and permits, but the federal laws are federally enforceable. The use of landscape materials (such as top soil, mulches, natural and manufactured fertilizers, crushed rock, sand, etc.) that potentially deposit silts, dusts, and debris into the storm water system near a Lot must be managed to reasonably preclude run-off or other disbursement (such as being blown) during stormy conditions. These materials should not be placed upon or adjoining any hard-surfaces such as driveways, walkways, curb, gutter, or street, where the potential for runoff is very high. If temporary storage results in these materials being located on these areas, then erosion control devices must be in place at the time of such storage. Some examples of erosion control devices are sandbags, encased straw, small stone rolls, straw bales, waddles, etc. Extreme care must also be taken when handling or storing chemicals such as oils, fuels, paints, fertilizers (liquid or dry), trash, etc., and such items must also be reasonably prevented from entering the storm water system. Generally, the storm water system starts at the curb or drainage system on each Lot and ends up eventually in the Nation's waterways. Roadways must be protected from silting and contamination.

Section 3.14. *Restrictions on Mining or Drilling.*

No real estate or improvements within the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, except drilling or exploring for oil, gas or other hydrocarbons pursuant to oil and gas leases in effect on the date that these Covenants are recorded, as the same may be amended and supplemented from time to time.

**ARTICLE 4.
ADDITIONAL PROVISIONS**

Section 4.1. *Enforcement/Assessment*

Each Owner grants to the Declarant, to the Metropolitan District and to the ACC, and there is excepted and reserved to the Declarant and Metropolitan District and the ACC, a lien upon the Lot of the Owner in the event of non-performance by the Owner of each of the terms and conditions contained in the Covenants herein. The amount of the lien shall be determined by the governing board of the Metropolitan District based on a schedule of penalties adopted by the governing board from time to time. After providing the Owner with notice and an opportunity to be heard, the governing board of the Metropolitan District may levy a penalty against any Owner if it finds the willful or negligent acts or omissions of the Owner or a user having a relationship with the Owner cause any violation of these Covenants, or cause any loss or damage to the Metropolitan District, or

cause an expenditure of funds in connection with the enforcement powers of the Metropolitan District. If the penalty is not paid within 30 days of receipt by the Owner, then a lien may be placed against the Lot which lien may include but not be limited to interest at a maximum rate provided by law, attorney's fees and costs. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in these Covenants, as amended, may also be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision(s). The Metropolitan District and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under these Covenants or any other governing documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Metropolitan District or any Owner to enforce any covenant, restriction or other provision contained herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 4.2. *Leases.*

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

Section 4.3. *Severability.*

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

Section 4.4. *Duration, Revocation and Amendment.*

Each and every provision of these Covenants shall run with and bind the Property and all Improvements perpetually from the date of recording of these Covenants. The benefits, burdens and all other provisions contained in these Covenants shall be binding upon, and inure to the benefit of the Declarant, the Metropolitan District, and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

These Covenants may be amended by a vote or agreement of the Owners of at least sixty-seven percent (67%) of the Lots; provided that, during the Development Period, no such amendment shall be effective without the prior, written consent of the Declarant.

Notwithstanding anything to the contrary contained in these Covenants, these Covenants 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, or to clarify any of these Covenants or any provision hereof. The Declarant's right of amendment set forth in the preceding sentence shall terminate concurrently with expiration of the Development Period.

Section 4.4.1. *HOA.*

The Declarant along with 67% of the owners of the lots in The Highlands in Paradise may form at their discretion, a full HOA to replace or add to these Covenants anytime in the future.

Section 4.4.2. Other HOA Requirements.

The street right of way will be private with the anticipation of future HOA Covenants.

Section 4.5. *Declarant's Use.*

Notwithstanding anything to the contrary contained in these Covenants, it shall be expressly permissible and proper for Declarant, its employees and agents, to perform such reasonable activities, and to maintain upon portions of the Lots such items as Declarant deems reasonably necessary or incidental to the construction and sale of Lots. The foregoing includes, without limitation, locating, maintaining and relocating management office, signs, and sales office, of such sizes, and at such locations as it determines in its reasonable discretion from time to time.

Section 4.6. *Notices.*

Any notice permitted or required in these Covenants shall be deemed to have been given and received upon the earlier to occur of (a) personal delivery upon the Person to whom such notice is to be given; or (b) four (4) days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to the Owner at the address for such Owner's Lot.

Section 4.7. *Limitation on Liability.*

The Declarant and the Metropolitan District and their directors, officers, shareholders, members, partners, agents or employees, shall not be liable to any Person for any action or for any failure to act arising out of these Covenants and the Guidelines, if any, unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 4.9 (Waiver) shall apply to this Section.

Section 4.8. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Metropolitan District, the ACC or by any of their officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, 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. The release and waiver set forth in Section 4.9 (Waiver) shall apply to this Section.

Section 4.9. *Waiver.*

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Metropolitan District, the ACC and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in these Covenants.

