

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
LUPTON VILLAGE PUD AND
LUPTON VILLAGE RESIDENTIAL METROPOLITAN DISTRICT**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LUPTON VILLAGE PUD is made and entered into this 15 day of July 2021, by LUPTON VILLAGE LAND DEVELOPERS, LLC, a Colorado Limited Liability Company, its heirs, affiliates, successors, and assigns, collectively hereinafter referred to as the "Declarant."

RECITALS

WHEREAS, Declarant is the owner of certain real estate located in the City of Fort Lupton, County of Weld, State of Colorado, legally described on Exhibit "A" attached hereto and incorporated herein by reference, as supplemented and amended from time to time ("Property"); and

WHEREAS, The 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 Lupton Village PUD (the "Development");

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 all applicable governmental entities with jurisdiction over the Property, including but not limited to the City of Fort Lupton and Weld 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 Lupton Village Residential Metropolitan District (the "Metropolitan District", as hereinafter fully defined) was organized under the laws of the State of Colorado pursuant to the Service Plan for the Lupton Village Residential Metropolitan District, approved by the City of Fort Lupton City Council on February 4, 2020 by Resolution 2020R022 (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 Weld, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Service Plan grants authority to the District to construct some or all of the public improvements, which may be provided in accordance with an Approved Development Plan or other agreement with the City; and

WHEREAS, this Declaration shall run with the land and be binding on and insure to the benefit of all parties having any right, title or interest in any portion of the Property, 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 the 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, 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 I. DEFINITIONS

1. **Definitions.** When used in this Declaration, unless the context clearly indicates otherwise capitalized terms not otherwise defined in the Service Plan or 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 "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

- 1.1.5 "Architectural Review Committee" or "ARC" shall mean and refer to the committee or committees 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 this Declaration.
- 1.1.6 "Board of Directors" or "Board" means the Board of Directors of the Lupton Village Residential Metropolitan District.
- 1.1.7 "City" shall mean the City of Fort Lupton, Colorado.
- 1.1.8 "Covenants" means the covenants, conditions, restrictions and easements of Lupton Village PUD contained in this Declaration, as amended as supplemented from time to time.
- 1.1.9 "Declarant" or "Developer" means Lupton Village Land Developers, 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 extend 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 Weld 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.
- 1.1.10 "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, Plats of the Property recorded in the office of the Clerk and Recorder of Weld County, Colorado.
- 1.1.11 "Dedicated Easements" shall mean the utility and/or drainage easements granted through the Property to the appropriate governmental entity, or public or private utility for providing utility service or drainage facilities to the Property.
- 1.1.12 "Development" shall mean the Lupton Village PUD development subject to this Declaration, consisting of the Property described on 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 the Lupton Village Residential Metropolitan District and all Future Parcels that may be included as Annexed Property.
- 1.1.13 "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 the Owners, and for other purposes as may be permitted hereunder.
- 1.1.14 "Dwelling Unit" shall mean and refer to a residential dwelling constructed on a Unit designated and occupied as a residence.
- 1.1.15 "Fines" shall mean and refer to any monetary penalty imposed by the Board of Directors against a Unit Owner and the Unit of the Unit Owner because of a violation of this Declaration by such Unit Owner, a member of the Unit Owner's family or tenant or guest of the Unit Owner or a member of a family of a tenant of a Unit Owner.



- 1.1.16 "Future Parcel(s)" means and refers to any real property adjacent to or in the vicinity of the Property 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. Declarant need not own Future Parcels so long as the Owner thereof consents to the potential annexation of such real estate to this Declaration. Future Parcels may be added to the Declaration by the Declarant, provided such Future Parcels are properly annexed into the City of Fort Lupton, included within the Metropolitan District and such inclusion is in accordance with law and any Service Plan or City requirements.
- 1.1.17 "Governing Board" means the Governing Board of the Lupton Village Residential Metropolitan District.
- 1.1.18 "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 ARC.
- 1.1.19 "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, solar panels, radiant gas piping 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 deseeded plants and trees and excluding 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 ARC, including any change in finish material, color or texture; (e) the repainting and resurfacing of exterior surfaces of structures, including roofing materials, gutters, downspouts, drain spouts, 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) reconstructions of any structures.



- 1.1.20 "Lot" shall mean and refer to a physical portion of the Development which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Plat. The term "Lot" as used in this Declaration or on the Plat shall have the same meaning as the term "Unit" as used in this Declaration and the Act.
- 1.1.21 "Metropolitan District" or "District" shall mean the Lupton Village Residential Metropolitan District, a quasi-municipal cooperation and political subdivision of the State of Colorado, its successor or assign, and/or any other metropolitan district(s) to whom the 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 Weld County, Colorado, of a document or transfer or assignment, duly executed by then-Metropolitan District. In the event that the Metropolitan District ceases to exist, Declarant may appoint an successor entity to serve as enforcer of this Declaration, which entity shall assume all rights and responsibilities of the Metropolitan District under this Declaration. The terms and conditions of this Declaration shall apply to the property within the Lupton Village PUD and property within the boundaries of the Lupton Village Residential Metropolitan District, which boundaries may be amended from time to time.
- 1.1.22 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee or undivided fee interest in any Unit, as defined herein, which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.1.23 "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 ARC. The Period of Declarant Control will begin with the recording of this Declaration and shall continue to run for 20 years after the date of recording of the final Plat of the final filing within the Property, unless terminated by the Declarant.
- 1.1.24 "Person" shall mean and refer to an individual, corporation, business trust, estate, limited liability company, limited partnership, general partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 1.1.25 "Plat" shall mean and refer to any plat for the Lupton Village PUD, as has been or will be recorded and may be amended from time to time, in the records of the office of the Clerk and Recorder of Weld County, Colorado.
- 1.1.26 "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.
- 1.1.27 "Property" shall mean and refer to that certain real property described on Exhibit A attached hereto and incorporated herein by reference, together with any Annexed Property.

- 1.1.28 "Purchase" shall mean and refer to a Person, other than a Declarant who, by means of a transfer, acquires a legal or equitable interest in a Unit, other than: A leasehold interest in a Unit of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or a Security Interest.
- 1.1.29 "Single Family" shall mean and refer to a group of persons related by blood or marriage living together as a family unit or any other group of persons living together as one (1) family for living and cooking purposes; provided, however, that no group of more than three (3) people not related by blood, marriage, adoption or some other similar legal relationship shall be deemed a Single Family.
- 1.1.30 "Special Declarant Rights" shall mean and refer to the rights reserved for the benefit of the Declarant to perform those acts specified in this Declaration.
- 1.1.31 "Supplemental Declaration" shall mean a declaration or covenants recorded by Declarant, with respect to any Future Parcel(s), 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 Future Parcel(s), and may contain exceptions, deletions or modifications from the covenants, conditions, restrictions and easements contained herein applicable to such Future Parcel(s). Any recorded document that establishes or creates a declaration or covenant shall be deemed a Supplemental Declaration for the purposes of this Declaration, whether or not it is labeled or identified as such.
- 1.1.32 "Unit" shall mean and refer to a physical portion of the Common Interest Community designated for separate ownership or occupancy, the boundaries of which are described in the Declaration, including the Plat of the Property.
- 1.1.33 "Unit Owner" shall mean and refer to the Declarant or other Person who owns a Unit but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the Owner of any Unit created in the Declaration until that Unit is conveyed to another Person.

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

ARTICLE II. DESIGN AND/OR ARCHITECTURAL REVIEW

2.1 Appointment of Members to ARC. The Governing Board shall appoint the members of the Architectural Review Committee. There shall initially be three (3) members of the ARC. Members of the ARC may be, but need not be, directors of the Governing Board. The Governing Board may also appoint a second ARC to review Improvements that are subsequent to the Improvements originally constructed on any Lot.

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

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 complete plans and specifications have been first submitted to and approved in writing by the ARC.

2.3.2 The ARC shall exercise its reasonable judgment to the end that all Improvements generally 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 ARC may require as a condition to its considering an approval request that the applicant(s) pay a fee and/or reimburse the ARC for the expenses incurred by the ARC in the review process (the "Review Fee"). The ARC may also require a deposit as a condition precedent to review and approval of any plans (the "Compliance Deposit").

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 or committee of representatives to act on its behalf. If the Governing Board does so, then the actions of such representative or committee shall be the actions of the Governing Board, subject to the right of appeal as provided below. However, if such a representative or committee is appointed by the Governing Board, then the Governing Board shall have full power over such representative or committee, including without limitation the power to at any time withdraw from such representative or committee any of such authority to act on behalf of the Governing Board and the power to at any time remove or replace such representative or committee.

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

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 Architectural Control Handbook with Design Guidelines, hereinafter referred to as "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 ARC. By way of example, and not by way of limitation, such provisions may state that a certain style of roofing material and color is acceptable or may state that only one or more types of fences are acceptable, and no other types will be approved. The Guidelines that may apply to a specific area may vary in another specified area, as determined by the ARC. Each area shall be identified and specified in the Guidelines established for said areas. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration.

2.5 Procedures. The ARC shall approve or disapprove all requests for approval within forty-five (45) calendar days after the complete submission of all plans, specifications, and other materials and information which the ARC may require in conjunction therewith. A stamped or printed notation, initialed by a member of the ARC, affixed to any of the plans and specifications, shall be deemed a sufficient writing. However, the ARC 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 ARC shall be conclusive evidence of compliance with this **Article II**, provided that the Improvements are constructed in compliance with the plans and specifications as approved. Failure to approve within forty-five (45) calendar days shall be deemed disapproval.

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

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 and the Compliance Deposit shall become non-



refundable; provided, however, the ARC, in its sole discretion, may grant extensions of time for completion of any proposed Improvements and proportional amounts of Compliance Deposit redemption.

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 ARC. Until the date of receipt of such Notice of Completion, the ARC 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.

2.9 Inspection of Work. The ARC 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) calendar days after the ARC shall have received a Notice of Completion from the applicant.

2.10 Notice of Noncompliance. If, as a result of inspections or otherwise, the ARC finds that any Improvement has been done without obtaining the approval of the ARC, 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 ARC shall notify the applicant in writing of the noncompliance; which notice of noncompliance shall be given, in any event, within sixty (60) calendar days after the ARC receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance.

2.11 Correction of Noncompliance. If the ARC 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) calendar days from the date of receipt of the notice of noncompliance. If such Person does not comply with the ruling within such period, the ARC may, at its option, retain the Compliance Deposit, 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 ARC, upon demand, for all costs and expenses incurred with respect thereto in excess of the retained Compliance Deposit.

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.

2.13 Access Easement. Each Lot is subject to an easement in favor of the ARC 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.

2.14 No Liability. The Metropolitan District, the Governing Board, the ARC, and the members thereof, as well as any representative of the Metropolitan District, the Governing Board and the ARC 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 ARC 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 ARC 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 ARC.

2.15 Variance. The ARC, 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 mitigate against the general intent and purpose hereof. In the event the City requires a variance, said variance shall be granted in advance of submitting a request for variance to the ARC. City approval of a variance does not obligate the ARC to also grant the same variance or adjustment.

2.16 Waivers; No Precedent. The approval or consent of the ARC, 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 ARC 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 III. RESTRICTIONS.

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.

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;

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

3.2.4 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 ARC from time to time.

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), or poultry (per City codes), 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 ARC shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets or poultry 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 and/or poultry; or that an Owner or resident is otherwise in violation of the provisions of this Section. In any such case, the ARC may take such action(s) as it may deem appropriate. An Owner's right to keep household pets and/or poultry shall be coupled with the responsibility to pay for any damage caused by such animals, as well as any costs incurred as a result of such animals. All Household Pets and/or poultry must be kept and their care shall be in compliance with and shall meet the City Code Requirements. It shall be the responsibility of the Owners to verify and check local and current City Codes and maintain their compliance with any and all applicable Ordinances, Rules and Regulations related thereto.

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.

3.5 Miscellaneous Requirements and Improvements.

3.5.1 Signs and Advertising. No advertising or signs of any character shall be erected, placed, permitted, or maintained other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent," or security sign of not more than five (5) square feet in the aggregate, and such other signs, for such length(s) of time, which have the prior written approval of the ARC or are expressly permitted by applicable law. Notwithstanding the foregoing, signs, advertising, or billboards used by the Declarant (or by any builder with the written consent of the Declarant) in connection with the sale or rental of Lots, or otherwise in connection with development of or construction on the Property, shall be permissible.

3.5.2 *Dog Runs, etc.* No clotheslines, drying yards, service yards, wood piles, storage areas or chain-linked (or other) dog runs, shall be so located as to be visible from a street or from the ground level of any Lot. Dog runs shall not be located within five (5) feet from any property line, and shall be screened by approved materials so that the dog therein is not visible from neighboring Lots. "Invisible" electric fences shall generally be permitted along property lines.

3.5.3 *HVAC.* No types of refrigerating, cooling or heating apparatus shall be permitted on a roof. Further, no such apparatus shall be permitted elsewhere except when appropriately screened from view of adjacent property owners and approved by the ARC. Without limiting the foregoing, conventional air conditioning units located on the ground of a Lot are permissible when approved by the ARC.

3.5.4 *Antenna.* Except as may otherwise be permitted by the ARC, no exterior radio antenna, television antenna, or other antenna, satellite dish (of greater than one (1) meter in size), or audio or visual reception device of any type shall be placed, erected or maintained, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant (or by any builder with the express written consent of the Declarant) in connection with the sale or rental of Lots, or otherwise in connection with development of or construction on the Property; and provided further, however, that the requirements of this subsection shall be subject to the Telecommunications Act of 1996 and applicable regulations, as amended from time to time.

3.5.5 *Fences.* Other than fences which may be constructed, installed or located by the Declarant (or by a builder with the express written approval of the Declarant) in its development or construction of Improvements in the Property, no fences shall be permitted except with the prior written approval of the ARC. No screening or fencing shall exceed six (6) feet in height. Any fences constructed on a Lot shall be maintained by the Owners of such Lot.

Lots 5 & 7, Block 6 of the Final Plat of Lupton Village P.U.D. are classified as "Reverse Corner Lots" by the City of Fort Lupton and a six-foot privacy fence shall be allowed when located behind the front plane of the house except on the side adjacent to the street. The area between the street and the fence must be maintained by the property owner. A four-foot fence is allowed in the side yard setback adjacent to the street, if fifty (50%) percent or more of the surface of the fence is open. The maximum picket width shall be four (4) inches. See Exhibit B for fencing detail.

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

3.5.7 *Sheds.* Sheds shall be permitted if: the shed is in accordance with the Guidelines and any rules and regulations or similar provisions; and the shed has the prior, written approval of the ARC.

3.5.8 *Additional 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”). These Guidelines, as may be amended from time to time, shall be enforceable by the District and ARC, and are incorporated herein by reference as if fully set forth herein.

3.6 Vehicular Parking, Storage and Repairs.

3.6.1 Except as otherwise provided in subsection 3.6.2 hereof and/or in rules and regulations which may be adopted by the Governing Board or the ARC from time to time, vehicles shall be parked only in the garages and driveways, if any, serving the Lots, or in appropriate spaces or areas which may be designated by the Governing Board or the ARC from time to time, except that any vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. Vehicles shall be subject to such reasonable rules and regulations as the Governing Board, or the ARC may adopt from time to time. The Declarant (or a builder with the express written approval of the Declarant) may designate certain parking areas for visitors or guests, and the Governing Board or the ARC may adopt reasonable rules and regulations, from time to time, governing traffic or parking areas.

3.6.2 Except as may otherwise be set forth in the rules and regulations or Guidelines, or as otherwise required by law, commercial vehicles, vehicles with commercial writing or “Logos” on the exterior of the vehicles less than 24 square inches on each side and the rear of the vehicle, vehicles primarily used or designed for commercial purposes, tractors, mobilehomes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, recreational vehicles, golf carts, boats and boat trailers, junk cars, cars that are not capable of moving on their own power, and buses shall be parked only in enclosed garages or specific areas, if any, which may be designated by the Governing Board from time to time. Additionally, Commercial Vehicles are also subject to the following restrictions:

- a. No Commercial Vehicles 1 ton or larger, or any vehicles that have mechanical devices (crane, bucket/boom, fueling tanks, tow truck lifts, generators, etc.) attached to them, shall be parked or stored in the Districts, except as provided in enclosed garages or specific areas (if any) designated by the Governing Board. No truck shall have fuel storage tanks on board or any hazardous material by DOT standards. You will be asked to remove such commercial vehicles from the District.
- b. Commercial Vehicles used by the homeowner for daily commuting with commercial writing (Logo’s) on their exterior front doors/sides/tail gate and or in window glass area that is a one (1) ton truck or smaller (Car) can have a small logo on each front door/sides/tail gate no larger than 24" by 24" measuring the sticker or magnetic sign from edge to edge. There shall be no parking for advertising allowed on cars, vans and or trucks. Racking systems (Ladder racks) on commercial vehicles are allowed in the District, with ladders side by side, although there shall be no stacking of ladders and no exposed material storage.



- c. Emergency vehicles (Police, Fire, (Government) or Volunteer are exempt from these restrictions. Volunteer vehicles will need documentation. Commercial Trucks/cars that do not meet these guidelines will be asked to park outside of the District's boundaries.
- d. These restrictions, however, shall not restrict trucks or commercial vehicles that are necessary for construction or for the maintenance of any portion of the Property or any Improvements located thereon, nor shall such restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted in the Property except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours without the prior approval of the Governing Board. This provision is intended to be broadly interpreted to cover almost any type of vehicle or structure not intended for every-day use. However, trailers, campers, motor homes, pickups, coaches, tents, or boats, which are entirely screened from view from the adjoining street or a neighboring house, or are stored completely within a garage, and are not used for living purposes, will not be in violation of these restrictions. The fact that a vehicle of the above description may be licensed by the State of Colorado or any other state as a passenger vehicle shall in no way exempt it from this provision or the general intent of this provision.

3.6.3 In the event the Governing Board determines that a vehicle is parked or stored in violation of subsections 3.6.1 or 3.6.2 hereof, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Governing Board in its discretion from time to time, the Governing Board shall have the right to remove or boot the vehicle at the sole expense of the owner thereof. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot or dwelling, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required, and the vehicle may be towed or booted immediately. If a vehicle is towed or booted in accordance with this Section, neither the Governing Board, nor any agent of the Metropolitan District shall be liable to any Person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Governing Board's right to tow or boot is in addition to, and not in limitation of, all other rights of the Governing Board, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Governing Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

3.6.4 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Property unless it is done within completely enclosed structure(s) which screen the sight



and sound of the activity from the street and from adjoining real estate and Improvements. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle on a Lot, together with those activities normally incidental and necessary to such washing and polishing.

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 that 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 any of the Project Documents, but shall not include any activities of the Declarant, the Developer, or a builder with the express written consent of the Declarant. No noxious or offensive activity shall be carried on, nor shall anything be done or placed on any Lot that is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

3.8 No Hazardous Activities; No Hazardous Materials or Chemicals. No activities shall be conducted which are or might be unsafe or hazardous to any Person, real estate or Improvements. Without limiting the generality of the foregoing, no firearms shall be discharged, and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to Person, real estate or Improvements

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

3.10 Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap, construction material or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall such items be deposited on a street, unless placed in a suitable, tightly covered container that is suitably located solely for the purpose of garbage pickup. 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.

3.11 Lots to be Maintained. Each Lot shall at all times be kept in a clean and slightly condition by the Owner(s) thereof. In the event accumulation of debris or growth of weeds is not property maintained by the Owner, the District shall retain the right to enter the Lot and mow, collect and remove debris or otherwise maintain the Lot, and the Owner of the Lot shall pay expenses incurred by the District to the District.

3.12 Leases. The term “lease,” as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases so long as the minimum lease term is 30 days. Any Owner shall have the right to lease his Lot, or any portion thereof, as long as all leases provide that the terms of the lease and lessee’s occupancy of the leased premises shall be subject in all respects to the provisions of the Project Documents; and that any failure by the lessee to comply with any of the Project Documents, in any respect, shall be a default under the lease.

3.13 Completion of Landscaping. Within the time frames as hereinafter provided, the Owner (other than the Declarant, or a builder with the express written approval of the Declarant) of each Lot shall install landscaping on all of the Lot which is not covered or enclosed by a building, fence or other structure, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and professionally correct pruning, removal of weeds, and replacement of landscaping. The Owner of each Lot (other than Declarant, or a builder with the express written approval of the Declarant) shall install landscaping on such Lot within one year after the home receives a certificate of occupancy. Landscaping plans and other required documents shall be in accordance with the Guidelines and shall be submitted to the ARC for review and approval prior to the installation of landscaping, except where installed by the Declarant, the Developer, or a builder with the express written approval of the Declarant. If any Owner fails to comply with this Section, or with the requirements of the ARC in installation or maintenance of landscaping, the Metropolitan District or the ARC may, at the direction of the

Governing Board, enter upon such Lot and install or maintain landscaping for which the Owner shall be obligated to pay, retain the Compliance Deposit until the landscaping is completed or levy a fine against the Owner for non-compliance.

3.13.1 *Landscaping Plans*. For any Lot an additional Review Fee must be paid to the ARC with submission of a landscaping plan unless they are submitted with the original Construction Drawings. Landscaping plans must be submitted and approved **PRIOR TO COMMENCEMENT OF LANDSCAPING**. Plans must depict fences, decks, sod, seeded areas, retaining walls, rock, timbers, sprinkler system, sizes and species of nursery materials, and include a drainage and grading plan that coincides with the builder’s plans, and show any Improvements or alterations thereto.

3.14 Maintenance of and Non-Interference with Grade and Drainage.

3.14.1 Each Owner shall maintain the grading of their Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner agrees that he will not in any way interfere with the established drainage pattern over his Lot. In the event that it is necessary or desirable to change the established drainage over any Lot, then the Owner thereof shall submit a plan to the ARC for its review and approval, in accordance with the Provisions of this Declaration and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. Further, each

Owner acknowledges that any such change may affect or void any warranties. For purposed of this Section “established drainage” is defined as the drainage, which exists at the time final grading of a Lot by, the Developer or builder is completed.

ARTICLE IV
RESERVATION OF DEVELOPMENT RIGHTS

4.1 Declarant and Builder Exemption. Notwithstanding anything to the contrary contained in any of the Project Documents, the Declarant (and any builder designated in writing by Declarant) shall be exempt from the Project Documents, including without limitation the requirement to obtain design approval from the ARC and any covenants or restrictions. Notwithstanding the foregoing, neither the Declarant nor any builder shall be exempt from the requirement to obtain approval from all governmental entities with jurisdiction over the Property.

4.2 General Provisions. Declarant, for a period of twenty (20) years from and after the recording in the real estate records of Weld County, Colorado, of the final plat of the final filing within the Property, will have the following development rights (collectively, the “Development Rights”) with respect to all of the Property:

4.2.1 *Period of Declarant Control.* Declarant shall have the right to maintain its position as Declarant hereunder and shall have the right to exercise any and all rights, duties and powers granted herein to the District at any time during the Period of Declarant Control Such right, duty or power shall be automatic, without any need for formal action being taken to evidence the same. Accordingly, all reference herein to the District shall, to the extent appropriate be construed to mean and refer equally to Declarant during the Period of Declarant Control. Notwithstanding anything set forth herein to the contrary, Declarant shall have all rights of an Owner hereunder.

4.2.2. *Completion of Improvements.* The right to complete or make Improvements as indicated on any Plat filed with respect to the Property.

4.2.3. *Annexation.* The right at any time, from time to time, to annex to the Property Future Parcel(s) or other additional real estate and Improvements, including without limitation any real estate and Improvements which may previously have been withdrawn from the Property. By each such annexation, if any, the Declarant shall be deemed to have amended the term “Property” to include such annexed Future Parcel(s) or other real estate and Improvements. Each such annexation, if any, shall be accomplished by recording of a Supplemental Declaration adding such Future Parcel(s) or other real estate and Improvements, recorded in the real property records of the Clerk and Recorder of Weld County, Colorado. Such Supplemental Declaration shall expressly and unequivocally provide that the Future Parcel(s) and other real estate and Improvements described therein shall be subject to this Declaration and all terms and provisions hereof. Any such Supplemental Declaration may include provisions, which, as to the Future Parcel(s) and other real estate and Improvements described therein: add to or change the rights, responsibilities and other requirements of this Declaration; establish additional covenants,



conditions, and restrictions not otherwise contained in this Declaration; and contain exceptions, deletions or modifications from the covenants, conditions, restrictions and easements contained in this Declaration.

4.2.4. *Create Lots.* The right to create Lots on the Property.

4.2.5. *Subdivide Lots.* The right to subdivide Lots on any part of the Property, and the right to relocate boundaries between Lots.

4.2.6. *Common Areas.* The right to create additional common areas, to convert Lots into common areas, or to convert common areas into Lots, on all or any portion of the Property.

4.2.7 *Withdrawal.* The right to withdraw the Property, or any portion thereof, from this Declaration so long as the Declarant owns the portion of the Property to be withdrawn. By each such withdrawal, if any, the Declarant shall be deemed to have amended the term "Property" to exclude such withdrawn real estate and Improvements. The right to withdraw any portion(s) of the Property includes the right to withdraw one or more Lots, or other portion(s) of the Property, at different times and from time to time. Each withdrawal, if any, may be affected by the Declarant recording a withdrawal document in the office of the Clerk and Recorder of the county in which such withdrawn real estate and Improvements are located. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de- annexation of the withdrawn real estate and Improvements from this Declaration so that, from and after the date of recording a withdrawal document, the real estate and Improvements so withdrawn shall not be part of the Property. If real estate is withdrawn from the Property ("Withdrawn Property"):

- a. The owner(s) of the Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the common areas within the Property.
- b. The owner(s) within the Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the common areas within the Withdrawn Property.
- c. Declarant shall prepare and record in the real property records of county where the applicable real estate is located whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the owners of the Withdrawn Property and the owners of the Property shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

4.2.8. *Merger.* The right to merge or consolidate the Property with another community of the same form of ownership.

4.2.9. *Sales and Construction Activities.* The right, for Declarant and any builder (but only with the express written consent of the Declarant), and their employees, agents, and contractors to perform, from time to time, and to maintain upon portions of the Lots, such activities and materials as Declarant or such builder deems necessary or incidental to the construction and sale of Lots and development and construction of Improvements. The foregoing includes, without limitation, locating, maintaining and relocating management offices, construction trailers, construction offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its discretion from time to time. Construction activities shall be in compliance with and not exceed times permitted for construction as provided in the City Code. Further, nothing contained in any of the Project Documents shall limit the rights of Declarant or a builder, with Declarant's express written approval:

- a. to excavate, cut, fill or grade any real estate (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;
- b. to use any Improvements on any real estate (with the consent of the Owner thereof) as a construction, management, model home, sales or leasing office in connection with the development, construction or sale of any real estate and/or Improvements; and/or for any other activity.
- c. to seek or obtain any approvals under any of the Project Documents association

4.2.10 *Master Association.* The right to make the Property subject to a master association.

4.2.11 *Dedications.* The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

4.2.12 *Use Agreements.* The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or common area, which may or may not be a part of the Property.

4.2.13 *Site Plan Modification/Expansion.* Nothing in this Declaration shall preclude the Declarant from modifying any Site Plan, subject to the approval of the required governmental authorities, including but not limited to the purpose of expanding the square footage of Improvements permitted to be constructed on the Lots owned by Declarant, provided that such modification does not have a material and adverse impact on any Lot not owned by Declarant, and does not violate any then-existing zoning, land use, or other requirements of the City or County in which the Property is located or any other governmental entity having jurisdiction.

4.3 Supplemental Provisions Regarding Development Rights. Without limiting the generality of the foregoing, certain of these Development Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any Plat in connection with the exercise of any Development Rights, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

4.4 Utility Easements. Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, and electrical, cable and other communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits, and conduits under and over the Property. No water, sewer, gas, telephone, electrical, communications or other utility or service lines, systems or facilities may be installed or relocated on the surface of the Property, unless approved by the ARC. These items may be temporarily installed above ground during construction, if approved by the ARC, subject to the requirements, if any, of any governmental authority having jurisdiction over the Property.

4.5 Drainage Easements. Declarant reserves for itself and its successors and assigns an easement to enter on any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Every Lot shall be burdened with easements for natural drainage of storm water runoff from the other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property without the consent of the ARC and the Owner of the affected property.

4.6 General Provision. Any Person using these general easements provided under Sections 4.4 and 4.5 above shall use its best efforts to install and maintain the easements for utilities or drainage without disturbing the uses of the Owners and the Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and in the case of utility work, shall restore the surface to its original condition as soon as possible after completion of its work, and shall comply with all requirements of the Guidelines and the ARC. Should any Person furnishing a service covered by these general easements request a specific easement by separate recordable document, Declarant shall have, and is hereby given the right and authority, with the prior approval of the ARC, to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, void, extinguish, or modify any other recorded easement affecting the Property.

4.7 Reservation for Construction. Declarant hereby reserves for itself and its successors and assigns a perpetual easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress. Declarant may make the location of these easements and rights-of-way certain with the prior approval of the ARC, by instruments recorded in the real estate records of Weld County, Colorado. Declarant further reserves the right to

establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action is approved by the ARC and does not hamper the enjoyment of the Property by the Owners.

4.8 Rights Incidental to the Construction Easement. Declarant expressly reserves the right to perform construction work and to store materials in secure areas, in Lots owned by it and in the common areas and the future right to control such work and repairs, and the right of access thereto, until its completion. Declarant may perform all work without the consent or approval of any Owner or mortgagee. Declarant reserves an easement through the common areas as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's Development Rights reserved in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the land not designated as reserved for future development in this Declaration or on any Plat for the purpose of furnishing utility and other services to the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the common areas.

4.9 Maintenance Easement. A blanket easement is hereby reserved to Declarant for the benefit of the Declarant, Declarant's Affiliates, successors and specific assigns, and granted to the Metropolitan District and any member of the Governing Board or ARC, and their respective officers, agents, employees, contractors and assigns, upon, across, over, in and under the Property and any Lot, and a right to make such use of the Property or Lot as may be necessary or appropriate to make repairs or to perform the duties, obligations, functions and maintenance which the Metropolitan District, the Governing Board, or the ARC are obligated or permitted to perform pursuant to the Project Documents and this Declaration, including the right to enter upon any Lot for the purpose of performing maintenance and repair thereon, as required by this Declaration, together with the right of access, ingress and egress necessary for such installation, maintenance, operation, repair, replacement and upkeep.

4.10 Operations and Maintenance Services and Costs. The Declarant hereby authorizes the Metropolitan District to provide certain operations and maintenance services to the Property in lieu of a homeowners' association (as may be authorized or limited by law and the Service Plan for the Districts), which services may include, operation and maintenance of any District pools, clubhouse, recreation center or recreation facilities, open space, common areas, greenbelts, landscaped medians, monuments, entry features, fencing, landscape buffers and setbacks, ponds, lakes, trails, paths and walkways, non-potable irrigation water facilities and improvements, detention/retention ponds and drainage facilities, covenant enforcement and architectural/design review services, and operations and maintenance services for public facilities and improvements not otherwise dedicated to the City in accordance with Approved Development Plans. Each Lot Owner may be charged an annual fee, for operation and maintenance services provided by the Metropolitan District as described herein. The annual fee shall subject to adjustment at the discretion of and as determined by the Governing Board of the Metropolitan District based upon the Metropolitan District's annual budget, and amendments thereto from time to time. The Board of Directors of the District shall not be liable for any

omission or improper exercise by any Agent or independent contractor of any duty, power or function so delegated by written instrument executed by or on behalf of the Board of Directors of the District.

4.11 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded Plat of the Property, or any portion thereof and the easements established in this Declaration.

4.12 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon all streets and upon the Property in the proper performance of their duties

4.13 Easements Deemed Appurtenant. Any and all conveyances made by Declarant to any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights created herein for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

4.14 Order of Exercise of Development Rights. The fact that Declarant may exercise one or more of Declarant's Development Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right with respect to any other portion of the Property. The Declarant may exercise its Development Rights on all or any portion of the Property in whatever order of development the Declarant, in its sole discretion, determines.

4.15 Rights Transferable. Any Development Rights created or reserved under this Article or elsewhere in this Declaration for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the real estate records of Weld County, Colorado. Such instrument shall be executed by the transferor (Declarant) and the transferee.

ARTICLE V
RELEASE, WAIVER AND CERTAIN DISCLOSURES

5.1 Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of proposed setback or offset 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 or offset, 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 the Covenants or the Guidelines, if any. A "minor violation," for the purpose of this Section, is a violation of not more than one (1) foot beyond the proposed setback or offset lines, so long as there is no encroachment into the established minimum setbacks and offsets determined by the Guidelines, Plat and City policies. Any encroachment into the minimum established setback or offset area shall require a Variance.

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. The release and waiver set forth in Section 5.6 (Waiver) shall apply to this Section.

5.2 Limitation on Liability. The Declarant, the Metropolitan District, the Governing Board, the ARC, and their directors, officers, shareholders, partners, members, agents and employees, shall not be liable to any Person for any action or for any failure to act arising out of this Declaration or the Project Documents, 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 5.6(Waiver) shall apply to this Section.

5.3 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 the Declarant, the Metropolitan District, the Governing Board, the ARC or by any of their officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects, 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. The release and waiver set forth in Section 5.6 (Waiver) shall apply to this Section.

5.4 Disclaimer Regarding Safety.

THE DECLARANT, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ARC, AND THEIR 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 DECLARANT, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ARC, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED HEREIN OR IN THE COVENANTS AND GUIDELINES, 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. THE RELEASE AND WAIVER SET FORTH IN SECTION 5.6 (WAIVER) SHALL APPLY TO THIS SECTION.

5.5 Development Within and Surrounding the Property. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of Improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Property, view of or from the Property or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Metropolitan District, the Governing Board, the ARC, and

their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 5.6 (Waiver) shall apply to this Section.

5.6 Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Metropolitan District, the Governing Board, the ARC, 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 this Declaration, and any Guidelines, rules and regulations, and other documents now or hereafter adopted by or for the Metropolitan District, including without limitation, those contained in Sections 5.1 through 5.5 of this Declaration.

5.7 Colorado Governmental Immunity Act. Notwithstanding anything to the contrary, the parties hereto understand and agree that liability for claims for injuries to persons, real estate or Improvements arising out of the negligence of the Metropolitan District, its boards, officials, and employees, is controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S. and §24-30-1501, et seq. C.R.S. Any provision of this Declaration or any Supplemental Declaration, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Metropolitan District to the above-cited laws.

ARTICLE VI
GENERAL PROVISIONS

6.1 Rules and Regulations. Rules and regulations concerning and governing the Property may be adopted, enacted, modified, amended, repealed, and re-enacted from time to time by the Governing Board and the ARC. Any such rules and regulations may be included in Guidelines promulgated by the ARC as set forth in Section 2.4 herein. Such rules and regulations may be incorporated into this Declaration. The rules and regulations may state procedural requirements, interpretations, clarifications and applications of this Declaration and law, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Governing Board and the ARC have the authority to adopt or vary one or more rules and regulations that are different for different types of Lots, if any. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

6.2 Enforcement.

6.2.1 Enforcement of the covenants, conditions, restrictions, easements, reservations, and other provisions contained in this Declaration, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. The Metropolitan District, the Governing Board, the ARC, 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 this Declaration or any other Project Documents, the prevailing party shall 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, the Governing Board, the ARC, or any Owner (including without limitation the Declarant) to enforce any covenant, restriction or other provision shall in no event be deemed a waiver of the right to do so thereafter.

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

6.2.3 The decision of the Metropolitan District, the Governing Board or the ARC to pursue enforcement action in any particular case shall be left to their discretion, subject to the duty to exercise judgment and be reasonable, and further restricted in that the Metropolitan District, the Governing Board or the ARC shall not be arbitrary or capricious in taking enforcement action. A decision of the Metropolitan District, the Governing Board or the ARC not to pursue enforcement action shall not be construed as a waiver of their right to enforce such provisions at a later time under other circumstances or preclude them from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Metropolitan District, the Governing Board or the ARC may determine that, under the circumstances of a particular case:

- a. the Metropolitan District's, the Governing Board's or the ARC's legal position is not strong enough to justify taking any or further action;
- b. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- c. that it is not in the Metropolitan District's, the Governing Board's or the ARC's best interest, based upon hardship, expense, limited effect on other Owners or other reasonable criteria, to pursue enforcement action.

6.3 Duration, Amendment and Supplement.

6.3.1 Each and every provision of this Declaration shall run with and bind the Property perpetually from the date of recording of this Declaration. Subject to subsection 6.3.2 of this Section, this Declaration may be amended and/or supplemented by the affirmative vote or agreement of the Owners of sixty-seven percent (67%) of the Lots. Notwithstanding the foregoing, the Metropolitan District shall not be required to comply with or enforce any such

Owner adopted amendments or supplements to this Declaration until such time as the Metropolitan District receives a recorded copy of such amendment and/or supplement in compliance with Section 6.5 of this Declaration (Notices).

6.3.2 Notwithstanding anything to the contrary, until twenty (20) years after conveyance of all the Property to the first Owners thereof other than the Declarant, no amendment or supplement of this Declaration shall be effective without the prior written approval of the Declarant.

6.3.3 Notwithstanding anything to the contrary, 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, the Metropolitan District, or any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

6.3.4 Notwithstanding anything to the contrary, 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, the Metropolitan District, or any other Person, in order to correct any clerical, typographical or technical errors in this Declaration or to clarify any provision of this Declaration.

6.3.5 Notwithstanding anything to the contrary, 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, the Metropolitan District, or any other Person, in order to comply with the requirements of any applicable law in the event any provision contained herein does not so comply.

6.3.6 Subsections 6.3.2, 6.3.3, 6.3.4 and 6.3.5 of this Section shall not be amended or deleted without the prior written approval of the Declarant.

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

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

6.6 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.

6.7 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.

6.8 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 and any Future Parcel(s). The benefits, burdens, and all other provisions contained in this Declaration

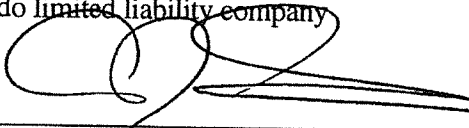
shall be binding upon, and inure to the benefit of the Metropolitan District, the Declarant, the Developer, and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand this 15 day of July, 2021.

DECLARANT/ DEVELOPER:

Lupton Village Land Developers, LLC,
a Colorado limited liability company

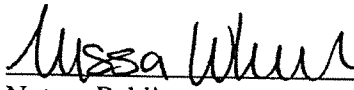


AJG NP Development, LLC, a Colorado limited liability company, Manager
By: Andrew J. Gerck, Member

STATE OF Colorado)
COUNTY OF Weld) ss.

Subscribed and sworn to before me on this 15 day of July, 2021 by Andrew J. Gerck, as Member of AJG NP Development, Manager of Lupton Village Land Developers, LLC, a Colorado limited liability company.

[SEAL]


Notary Public

MELISSA WHEELER
Notary Public
State of Colorado
Notary ID # 20194022905
My Commission Expires 06-17-2023

My commission expires 06/17/2023

**METROPOLITAN DISTRICTS' CONSENT TO
DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS, AND EASEMENTS FOR
THE LUPTON VILLAGE PUD**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, as the Metropolitan District charged with covenant enforcement and architectural review services under this Declaration, hereby consents to subjection of the Property to this Declaration and all the terms and provisions hereof.

Executed this 15 day of July 2021.

LUPTON VILLAGE RESIDENTIAL METROPOLITAN DISTRICT

By: William J. Johanningsmeier
Name: William J. Johanningsmeier
Title: President

STATE OF Colorado)
COUNTY OF Weld) ss.

The forgoing instrument was acknowledged before me this 15 day of July 2021 by William Johanningsmeier as a President of the LUPTON VILLAGE RESIDENTIAL METROPOLITAN DISTRICT.

[SEAL]
MELISSA WHEELER
Notary Public
State of Colorado
Notary ID # 20194022905
My Commission Expires 06-17-2023

Melissa Wheeler
Notary Public

My commission expires 6/17/2023

Exhibit A
Property Description

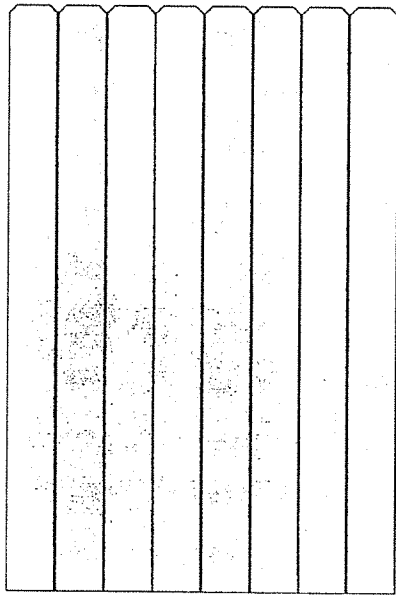
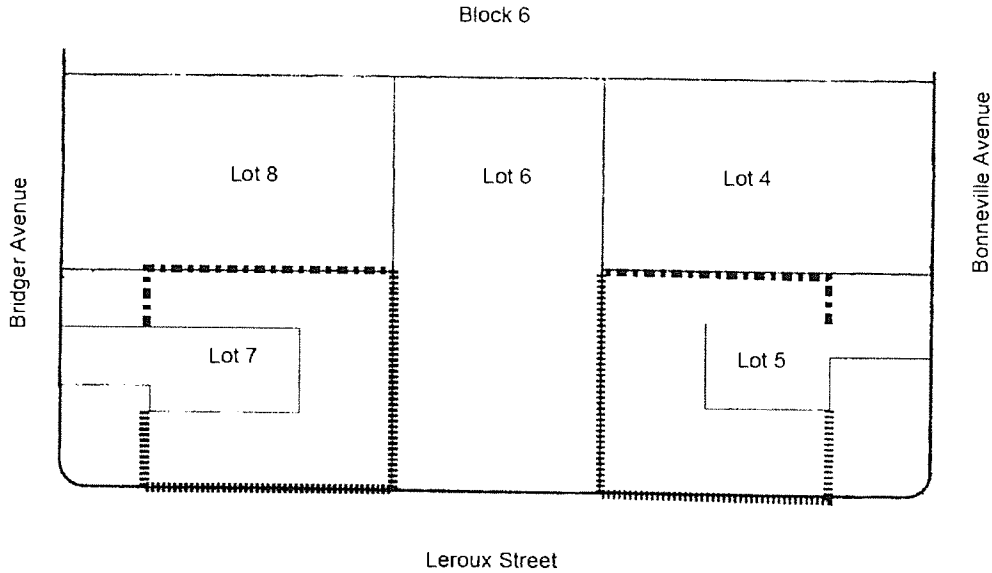
Lots 1- 73 and Outlot A of Lupton Village PUD Second Filing as recorded June 14, 2021,
as Reception No. 4725741, of the records of Weld County, Colorado.

AND

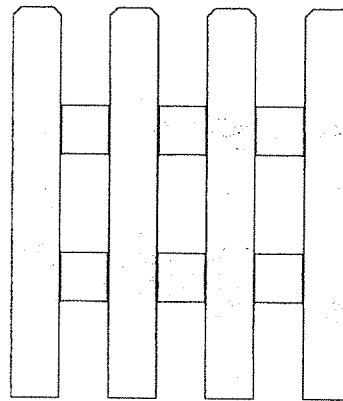
Lots 1-12, Block 1; Lots 1-23, Block 2; Lots 1-22, Block 3; Lots 1-10, Block 4; Lots 1-12, Block
5; Lots 1-11, Block 6; Tracts E, F, G, H, I, J and K of the Final Plat of Lupton Village P.U.D. as
recorded February 19, 2021, as Reception No. 4684462, of the records of Weld County
Colorado.



Exhibit B Fencing Detail



6 Foot Fence



4 Foot Fence