

DRAFT AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CHERRY CREEK VISTA SOUTH

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CHERRY CREEK VISTA SOUTH**

THIS Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cherry Creek Vista South is made on the date hereinafter set forth by the Cherry Creek Vista South Homeowners Association, a Colorado nonprofit corporation (the "Association").

RECITALS

A. Golden Key Homes Bldg. Corp. ("Declarant"), as Declarant and owner of certain real property, executed that certain Protective Covenants, Conditions and Restrictions for Cherry Creek Vista Filing No. 8 recorded in the real property records of Arapahoe County, State of Colorado on February 2, 1976, at Book 2414, Page 775 and Reception Number 1532964. Declarant recorded Protective Covenants for Cherry Creek Vista Filing No. 9 in the real property records of the County of Arapahoe, State of Colorado, in Book 2511 Page 582, which Covenants were recorded October 28, 1976. Declarant recorded Protective Covenants for Cherry Creek Vista Filing No. 10 on June 20, 1978 at Book 2796 Page 431 in the real property records of the County of Arapahoe, State of Colorado. Declarant executed Protective Covenants for Cherry Creek Vista Filing No. 11, recorded in the real property records of the County of Arapahoe, State of Colorado in Book 3024 and Page 120 on July 2, 1979, at Reception No. 1864410. Declarant executed Protective Covenants for Cherry Creek Vista Filing No. 12, recorded in the real property records of the County of Arapahoe, State of Colorado in Book 2730 and Page 201 on February 23, 1978 at Reception No. 1711282. G.K., Inc., executed Protective Covenants for Cherry Creek Vista Filing No. 13 recorded in the real property records of the County of Arapahoe, State of Colorado in Book 3024 and Page 124 on July 2, 1979 at Reception No. 1864411. IRFLOR, Inc., executed Protective Covenants for Cherry Creek Vista Filing No. 14 recorded in the real property records of the County of Arapahoe, State of Colorado in Book 3460 and Page 146, recorded July 30, 1981.

B. The documents referenced in Paragraph A above, and any subsequent amendments, supplements or annexations shall be referred to hereafter as the "Original Declarations." The Original Declarations created planned communities and imposed upon the real property described in the Original Declarations and all property thereafter annexed, certain terms, provisions, covenants, conditions, restrictions, easements, right-of-way, reservations, uses, limitation and obligations, which run with and are binding upon said real property, to protect and enhance the quality, value, aesthetic, desirability and attractiveness of said real property and the Owners of such ~~Common Interest~~ Community.

~~B.C.~~ The Owners recognize that the Community has generally thrived and functioned, as a whole over the years, aesthetically (with a few serious exceptions) and in terms of property values, with modest property covenants and a homeowners' association that was not overly intrusive into the everyday affairs of the Owners and wish to for the most part to preserve the same.

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~~C.D.~~ Nevertheless, the Owners and Association desire to improve upon the Original Declaration by amend and restate all provisions of the Original Declarations ~~throughby virtue of~~ this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cherry Creek Vista South (the “Declaration”), and intend upon the recording and continued validity of this Declaration that the Original Declarations shall be superseded by this Declaration.

NOW THEREFORE, the Original Declarations are amended and restated as follows:

ARTICLE 1 DEFINITIONS

Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

Section 1.1 Act “Act” shall mean and refer to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq.* as it may be amended from time to time. The adoption and recording of this Declaration is not intended to be and shall not constitute an election under C.R.S § 38-33.33-118 to be fully subject to the Act.

Section 1.2 Articles “Articles” shall mean and refer to the Articles of Incorporation of Cherry Creek Vista South Homeowners Association, a Nonprofit Corporation, as amended.

Section 1.3 Association “Association” shall mean and refer to the Cherry Creek Vista South Homeowners Association, a Colorado nonprofit corporation, its successors and assigns.

Section 1.4 Board “Board” shall mean and refer to the Board of Directors of the Association.

Section 1.5 Budget “Budget” shall mean a written, detailed, and itemized estimate of the income to be derived and the similarly detailed and itemized expenses to be incurred by the Association on an annual or more frequent basis in performing its functions under this Declaration and prepared pursuant to Article 5 of this Declaration.

Section 1.6 Bylaws “Bylaws” shall mean and refer to the Bylaws of the Association.

Section 1.7 Common or Common Interest Expense. “Common or Common Interest Expense” means (i) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, or any other items for which the Association is responsible; (iii) insurance premiums for the insurance carried under Article 10; and (iv) all expenses lawfully determined to be Common Expenses by the Board and the Owners.

Section 1.8 Common or Common Interest Expense Assessments or Assessments
“Common or Common Interest Expense Assessments or Assessments” shall mean Annual or Special and Default Assessments as further defined in this Declaration, the Bylaws and the Act, and shall include late charges, attorneys’ fees, fines and interest charged by the Association.

Section 1.9 Deed of Trust “Deed of Trust” shall mean a Mortgage.

Section 1.10 First Mortgage “First Mortgage” means any Mortgage upon a Lot as shown in the public records of Arapahoe County which is not subject to any prior or senior lien or encumbrance, except this Declaration, liens for taxes or other liens which are given priority by the statute.

Section 1.11 Guest “Guest” shall mean and refer to any agent, tenant, employee, family member, guest, licensee, or invitee of an Owner who enters upon the Property, defined below.

Section 1.12 Improvement “Improvement” shall mean all structures and unscreened improvements located upon or made to a Lot, defined below, that can be seen from the public right of way and any appurtenances thereto of every the -type or kind, including, without limitation, buildings, patio covers, awnings, the painting of any exterior surfaces of any visible structure, pools, hot tubs, roofing, trash containers, mail boxes, satellite dishes, play structure or apparatus, security cameras; additions, walkways, front doors, large outdoor sculptures or artwork, sprinkler pipes; garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, major landscaping changes such as xeriscape, hedges, windbreaks, plantings, planted trees and shrubs; poles, signs, exterior tanks, solar equipment as permitted by law and exterior air conditioners.

Section 1.13 Lot “Lot” shall mean a physical portion of the Property which is designated for separate ownership or occupancy and the boundaries of which are depicted upon the Plat or any Supplemental Plat. For the purpose of conforming the terms and provisions of this Declaration to the terms and provisions of the Act, the term “Lot” shall be analogous to the term “Unit” as the term is defined in the Act. The term “Lot” shall not include: (a) any property owned by a public body.

Section 1.14 Member “Member” shall mean and refer to every person or entity that holds membership in the Association.

Section 1.15 Owner “Owner” shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to any Lot which is a part of the Properties, and contract sellers, but excluding those having such interest merely as security for the performance of an obligation (i.e. a Mortgagee).

Section 1.16 Plat “Plat” shall mean the plat, recorded on dates listed under RECITALS section A in the real property records of Arapahoe County, Colorado at reception numbers listed under RECITALS, section A and any other amended, supplemental or additional plats, filings or survey exemptions thereof designating Lots.

Section 1.17 Property “Property” or “Properties” shall mean and refer to that certain real property described in the Original Declarations, as more particularly described in Exhibit “A” attached hereto and incorporated by this reference, and such additions thereto as may hereafter

be brought within the jurisdiction of the Association, together with all easements, rights, and appurtenances thereto, and the buildings and Improvements erected or to be erected thereon.

Section 1.18 Residence “Residence” shall mean and refer to a residential dwelling unit constructed upon any of the Lots shown upon any Plat of the Properties.

Section 1.19 Mortgage “Mortgage” shall mean any mortgage, deeds of trust, contract of sale or other document pledging a Lot as security for the payment of a debt or obligation.

Section 1.20 Mortgagee “Mortgagee” shall mean any person, corporation, partnership, trust, company or other legal entity which takes, holds, owns, or is secured by a mortgage.

ARTICLE 2 MEMBERSHIP

Section 2.1 Membership Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of a Lot shall be the sole qualification for membership.

ARTICLE 3 VOTING RIGHTS

Section 3.1 Voting Rights Each Lot shall be allocated one (1) vote. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE 4 PROPERTY RIGHTS

Section 4.1 Rights of the Association. Ownership of a Lot within the Association shall be subject to the right of the Association to suspend the voting rights of any Owner for any period during which any assessment against his or her Lot remains unpaid.

ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation to Pay Common Expense Assessments

Each Owner of any Lot situated within the Property, by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association Annual Assessments (~~i.e. dues~~) or Special Assessments, Default Assessments, and such other Assessments as imposed by the Association. ~~Failure to pay such~~ Assessments, including fees, ~~charges~~, late charges, court costs, attorney fees ~~up to \$500~~, ~~fees~~ and interest charged by the Association and necessary to enforce these Declarations shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges become or fell due. Assessments imposed by the Association, including fees, charges, late charges, court costs, attorney fees ~~up to \$500~~, ~~fees~~, and interest charged by the Association shall be a charge on each Lot and shall be a continuing non-foreclosable lien upon the Lot

against which each such assessment or charge is made, payable no later than on sale or refinance of the Property. The Board retains all legal avenues available to collect said Assessments and may use them at its discretion. If any Assessment is payable in installments, the installment amount of the Assessment is also a non-foreclosable lien from the time the installment becomes due. No Owner may become exempt from liability for payment of the Common Expense Assessment by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable as specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason; except as may be provided by consent of the Board.

Section 5.2 Annual Assessments/Commencement of Common Expense Assessments

Beginning for the 2018 fiscal year, commencing January 1, 2018, (The Annual Assessment shall be sixty dollars and zero cents (\$60) made on an annual ~~or more frequent~~ basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The Board shall cause to be prepared, published, and sent all Members by ordinary first-class mail, at least once each fiscal year, at least 90 days in advance of the next fiscal year, a proposed Budget for such fiscal year, including a reasonable provision for contingencies and deposits into the operating fund. Annual assessments shall not be increased by more than six percent (6%) over the previous year's assessment. Annual assessments may be increased by more than six percent to pay for a new service such as single neighborhood trash collection with the affirmative vote of sixty-seven percent (67%) of those votes cast by those Owners present, in person or by proxy at a special meeting called for that purpose at which a quorum is present, with one vote per Lot represented. The quorum at such meeting shall be twenty-five percent (25%) of the Owners entitled to vote.

The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each maintenance fund, and shall reflect any expected income of the Association for the coming fiscal year and any expected surplus from the prior year, along with a proposed annual assessment amount overall and for each Property to attain the proposed income in the proposed Budget. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper reserve fund, if any, for any purpose reasonably related to the operation of the Association. ~~Within ninety (90) days after adoption of any proposed Budget, the Board shall mail, by ordinary first class mail, or otherwise deliver in any manner approved by the Act, or by the Colorado Revised Nonprofit Corporation Act, a summary of the Budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the Budget. This Section shall not be effective or apply for the 2017 fiscal year~~

Section 5.3 Special Assessments

In addition to the Annual Assessments authorized by this Article, the Association may levy once in any fiscal year ~~one or more~~ Special Assessments, payable over such a period as the Association may determine, for the purposes of defraying, in whole or in part, the cost of any expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to the Section shall be assessed to Owners in the same proportion as Annual Assessments. The Association shall not levy a Special Assessment without the affirmative vote of sixty-seven percent (67%) of those votes cast by those Owners

present, in person or by proxy at a special meeting called for that purpose at which a quorum is present, with one vote per Lot represented. The quorum at such meeting shall be twenty-five percent (25%) of the Owners entitled to vote. Notice in writing of the amount and time for payment of the Special Assessments shall be given promptly to the Owners.

Section 5.4 Lien Rights and Default Assessments All ~~amounts~~~~monetary fines~~ assessed against an Owner, with the exception of late fees and interest for non-payment of Assessments, pursuant to the Declaration, Bylaws, Articles of Incorporation or rules and regulations, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of or as a result of the Owner or their Guest(s) shall be ~~a~~ Default Assessment ~~that~~~~and~~ shall become a non-foreclosable lien against such Owner's Lot, payable on refinance or sale of the Property or which may be foreclosed or as otherwise collected as Assessments as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ~~thirty~~ ~~(30)~~ sixty (60) days prior to the due date. Costs of collection, including court costs and attorney's fees, shall be borne by the Owner subject to such Assessment. The Board shall establish a schedule of reasonable amounts for default assessments.

Section 5.5 Purpose of Assessments The Assessments levied by the Association through its Board shall be used for ~~any~~~~the~~ purposes authorized by the Association's governing documents or authorized by law and in accordance with the adopted Budget.

Section 5.6 Uniform Rate of Assessment Both Annual and Special Assessments must be fixed at a uniform rate for all Lots.

Section 5.7 Effect of Non-Payment of Assessments – Remedies of the Association Any Assessments which are not paid when due shall be delinquent. If an assessment installment is not paid within thirty (30) days after the due date, said assessment installment shall be considered late and shall be subject to a late charge not to exceed the amount of the unpaid Assessment as may be imposed by the Board and shall bear interest from the date of delinquency until paid at the rate of twenty-one percent (21%) per annum, or any such lesser rate as the Board may establish by policy. The Association may bring an action at law against the Owner personally obligated to pay the delinquent installments. In addition to such action or as an alternative thereto, the Association or its agent may, but need not record with the Clerk and Recorder of Arapahoe County, a Notice of Lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and the amount of delinquent Assessments then owing, which Notice shall be duly signed and acknowledged by the President or Vice President of the Association or the Association's Manager or Attorney. ~~The Association may also proceed to foreclose the lien in the same manner as provided for the foreclosure of mortgages on real property under the statutes of the State of Colorado.~~ In any collection action, the Association shall be entitled to recover as a part of the action, delinquent interest, late fees and, costs, and attorney's fees up to \$500. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his Lot. ~~The Association shall also be entitled to the appointment of a receiver to rent any non-Owner-occupied Lot, to collect such rents and apply them to the amounts due and owing to the Association, and all other rights granted by law.~~

Section 5.8 Lien Priority The non-foreclosable lien of the Association under this Article is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Original Declaration; (2) a First Mortgage on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under State or Federal Law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that the sale or transfer of any Lot pursuant to foreclosure of any First Mortgage shall only extinguish the lien of assessment charges as provided by applicable State law. No such foreclosure shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor for the lien thereof.

ARTICLE 6 ARCHITECTURAL REVIEW COMMITTEE

Section 6.1 Composition of Committee The Architectural Review Committee ("ARC") shall consist of no fewer than three (3) persons appointed by the Board of the Association. Board members may serve on the ARC Architectural Review Committee. ~~A majority of the ARCCommittee may designate a representative to act for it.~~

Section 6.2 Review by Committee ~~No~~No Improvement, structure or any attachment to an existing structure, whether a Residence, any accessory building, fences, walls, athletic facility or equipment, or any other Improvements or attachments, shall be constructed upon the Property and no alteration of the exterior of a Residence or other structure shall be made, including without limitation, painting, roofing, or siding, and no change in the final grade, nor any major change to landscaping shall be performed, unless the complete plans and specifications shall have been first submitted ~~to~~ and approved in writing by the Architectural Review Committee. ~~ARC as outlined at the HOA's website, www.ccvshoa.com or otherwise outlined in Board rules and regulations.~~ Such plans and specifications are to show exterior design, height, materials, color, and location of the structure or addition to the structure, plotted horizontally and vertically, a general plan of landscaping, fencing, walls, windbreaks and a grading plan, as may be appropriate. Applications for painting must be accompanied by a sample of the proposed color. Plans and specifications shall be submitted in duplicate, with one copy retained for the Association's records and the second copy to be returned to the Owner with the ARC Architectural Review Committee decision. The ARC Architectural Review Committee shall exercise its best judgment to the end that all attachments, Improvements, construction, landscaping and alterations to structures and on lands within the Property conform to and harmonize with the existing surroundings and structures. The ARC Architectural Review Committee may establish acceptable improvement colors or details, and plans that strictly conform to said list need not be submitted for review. Previously approved paint colors, fence types, roofing materials, or other improvements need not be submitted for approval. ~~exterior painting, but a~~ No paint color or ~~colors~~ roofing materials shall be allowed that are not earth-toned or deemed by the ARC to be obnoxious, loud, inconsistent, sharply contrasting or not harmonious with surrounding properties. Owners are encouraged to submit exterior paint chips

or plans to the ARC to avoid potential ARC action for painting projects that violate the standard described herein.

Section 6.3 Procedures The Board of Directors, with the assistance of the ARC Architectural Review Committee, may adopt written rules and regulations, procedures and policies for submission, approval and completion or proposed Improvements, including without limitation, the right to impose conditions on approvals. Depending on the Improvement requested, the Architectural Review Committee may require ~~payment from the Owner of such amounts necessary to employ an expert to review the submission~~ the homeowner to acquire all required governmental permits at their own expense. The ARC Architectural Review Committee shall make its best efforts to approve or disapprove all plans within thirty (30) days after ~~receipt submission~~, but any application not approved within such time frame, unless the ARC for good cause advises the Owner in writing that it requires an additional 30 days or less to make a determination, shall be deemed approved. The ARC Architectural Review Committee may request additional documentation within the stated deadlines imposed by this section during the review process as is deemed reasonable and appropriate by the ARC Committee.

Section 6.4 Vote A majority vote of the ARC Architectural Review Committee is required to approve an application, ~~unless the ARC Committee has designated a representative to act for it, in which case the decision of the representative shall control.~~

Section 6.5 Records The ARC Architectural Review Committee or the Association's management company shall maintain written records of all applications submitted to it and all actions taken by it thereon subject to any policy pertaining to records inspection or retention.

Section 6.6 Liability The ARC Architectural Review Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner 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.

Section 6.7 Variance The ARC Architectural Review Committee may grant reasonable variances or adjustments from any conditions imposed by this Article in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained in this Article. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 6.8 Minor Violation of Setback Restrictions If upon the erection, or reconstruction in the original location and configuration, of any Residence or improvements upon any of the Lots which are subject to these restrictions, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of the Lots immediately adjoining the Lot upon which the violation or infringement occurs, and such waiver shall be binding upon all other Owners who are subject to this Declaration subject to a court of relevant jurisdiction, with notice of any finding sent to the HOA. Nothing herein contained shall prevent the prosecution of a suit for any

other violation of the restrictions contained in this Declaration. A “minor violation” for purpose of this Section is a violation of not more than one (1) foot beyond the required setback lines.

Section 6.9 Failure to Obtain Approval If any Improvement subject to this Article is erected or maintained without the approval of the ~~ARC Architectural Review Committee~~, the Association, in addition to any other available remedies, after reasonable notice with an opportunity to be heard and subject to the applicable provisions of the Act, ~~may impose reasonable fines after notice and an opportunity for the Owner to be heard. The Association shall reserve the right to~~ may require an Owner to remove or modify any Improvement which was erected without ~~ARC Architectural Review Committee~~ approval. If the Owner and the ARC are unable to reach agreement to resolve such dispute, the parties are encouraged to ~~shall~~ submit the matter to mediation to seek resolution, with each party bearing the costs equally. If the dispute still remains unresolved or if the parties do not agree to mediate, the Association ~~and~~ may seek injunctive relief in the Small Claims Court in and for Arapahoe County, which shall retain exclusive jurisdiction for such proceeding and claims for money damages.

ARTICLE 7 MAINTENANCE

Section 7.1 Owner’s Negligence If the need for maintenance or repair is caused through the willful or negligent act of any Owner, his agent, family, Guests or invitees, the Owner shall be subject to action by the Association for injunctive relief to remedy the condition of the Property consistent with the provisions hereunder and as permitted by law. ~~cost of such maintenance or repairs shall be added to and become part of the Assessment to which such Owner’s Lot is subject.~~

Section 7.2 Owner’s Responsibility Except as otherwise provided in Section 7.1 of this Article, each Owner shall be responsible for the maintenance, repair and/or reconstruction, of their Lot and all structures and Improvements on the Lot including, without limitation, the Residence, landscaping, grading, fences, drainage and utilities; provided, however that any exterior change, addition, alteration or modification, including, without limitation, exterior painting, shall be subject to review by the ~~ARC Architectural Review Committee~~ pursuant to Article 6 of the Declaration. All exterior repair, replacement and maintenance of the Residences and Improvements, structures, and landscaping shall be subject to this Declaration and the rules and regulations promulgated by the Board.

Section 7.3 Duty to Maintain The grounds, structures, and Improvements on each Lot shall be maintained in good repair and in a neat, clean, safe, sanitary, and attractive manner, as determined exclusively by the Board. Upon the Owner’s failure to do so, the Association may levy reasonable fines or assessments for non-compliance following written notice and an opportunity for the Owner to be present at a hearing. In addition to other remedies herein and as provided by law, if any Owner fails to perform his or her maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board after said notice, the Association may, if said failure continues for thirty (30) days after written notice to said Owner by the Association and an opportunity to respond, pursue injunctive relief. The cost of such enforcement including all attorney’s fees shall be the personal obligation of the Owner of the Lot upon which such work is performed as a Default Assessment, and shall otherwise be subject to

all of the terms and provisions applicable to Assessments as provided in Article 5 of the Declaration, including, without limitation, interest, costs, late charges, and lien rights.

Section 7.4 Duty to Reconstruct Any damage to or destruction of any structure Improvement or Residence located on any Lot ~~shall~~, except as hereafter provided, ~~shall be~~ promptly repaired and reconstructed by the Lot Owner thereof using insurance proceeds and personal funds of such Lot Owner unless agreed to in writing by the Board. In the case of fences erected on or near the boundary lines between two Lots, the Owners of the respective Lots shall be jointly and severally liable for repair or reconstruction. "Repaired and Reconstructed" means restoring the Improvement, structure or Residence to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a Residence located on a Lot shall be so destroyed or damaged as to be no longer habitable, then the Owner of said Lot shall, within a reasonable time, not to exceed 180 days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the Residence, or demolish the same. Demolition shall include removal of any foundation, slab, basement walls and floors, re-grading the Lot to a level condition and the installation of such landscaping as may be required by the ~~ARC Architectural Review~~ Committee pursuant to a plan submitted according to the terms of this Declaration. If the Lot Owner does not either commence repair, reconstruction or demolition within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the ~~ARC Architectural Review Committee~~, then the Association may, in its reasonable discretion, after providing reasonable notice and an opportunity for a hearing, enter upon the Lot for the purpose of demolishing the Residence and then re-grade and landscape the Lot. The cost related to such demolition and landscaping shall be the personal obligation of the Owner of the Lot upon which such work is performed as a ~~Default~~ Assessment, and shall be subject to all of the terms and provisions applicable to Assessments as provided in Article 5 of the Declaration, including, without limitation, interest, late charges and lien rights.

ARTICLE 8 USE RESTRICTIONS

Section 8.1 General Restrictions The use of the Lots and Improvements thereon shall be subject to the restrictions hereinafter set forth. Reasonable fines may be levied and injunctive or other relief may be sought by the Board for failure to comply with these restrictions.

Section 8.2 No Violations of Law No use shall be made of the Lots and Improvements thereon which would in any manner violate the statutes, rules, regulations, orders or decrees of any court or governmental authority having jurisdiction over the Property.

Section 8.3 Drainage No material changes shall be made to the drainage on any Lot without Architectural Review Committee approval. Approval may be conditioned upon the submission of a survey obtained from a qualified surveyor or a drainage study prepared by an engineer, or both, as approved by the Architectural Review Committee, at the Owner's expense.

Section 8.4 Commercial Use No business or commercial activity of any kind whatever shall be conducted on any Lot or upon any portion of the Property, unless the activity:

- (a) Is a garage or yard sale held by an Owner or resident, subject to rules and regulations promulgated by the Board including, without limitation, restrictions on the time and frequency allowed, use and placement of signs; or
- (b) Satisfies the following restrictions:
 - a. The activity is conducted and carried out entirely within the Residence;
 - b. There is no sign or advertising of the activity anywhere on the Property;
 - c. There is no odor, noise, vibration, smoke, dust, heat or glare noticeable outside the Residence, even when doors and windows are open;
 - d. The activity is clearly secondary to the use of the Residence as a residential dwelling unit and does not change the character of the Residence as a residential property;
 - e. The activity does not violate the laws, statutes, ordinances or regulations of any governmental entity having jurisdiction over the Property;
 - f. There are no materials stored outside of the Residence; and
 - g. The activity does not unreasonably increase traffic within the Property.

Section 8.5 Animals No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other commonly maintained household pets of a type and quantity as permitted by rules and regulations adopted by the Board may be kept, provided that they are not kept, bred or maintained for any commercial purpose and do not make objectionable noises, odors or otherwise constitute a nuisance, an unreasonable annoyance or a material inconvenience to any other resident. Dogs shall not be left outside if they are barking. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet or any expense incurred by the Association as a result of the keeping of such pet.

Section 8.6 Signs No sign, poster, billboard, or advertising device or display of any kind, shall be erected placed or permitted to remain on any Lot, without prior, written approval from the Board provided however that Owners shall be permitted one temporary professionally prepared sign of not more than five square feet and containing the word “For Sale” or “For Rent” per Lot which is placed in a window or along the front of a Lot parallel to the street and at least three feet (3’) from the sidewalk. Signs giving notice of the existence of a security system shall be permitted. Advertising signs for services or construction being performed on a house must be taken down within three days of the service’s completion. Political signs are permitted on the Lots to the extent required to be permitted by law, subject to the rules and regulations of the Association.

Section 8.7 Sheds and Outbuildings No shed, outbuilding or other similar structure greater than eight feet tall and/or 100 square feet shall be erected or placed on any Lot without prior approval from the ARC Architectural Review Committee. ~~No such structures shall have electricity.~~

Section 8.8 Antennae All exterior placement or installation of antenna, satellite dishes and other over-the-air reception devices one meter (39.37 inches) or less in diameter, designed for

reception of video signals within the Property shall be subject to the rules and regulations to the extent permitted by federal law. Devices over one meter in diameter, and radio reception devices may be installed only with the prior written approval of the [ARC Architectural Review Committee](#).

Section 8.9 Solar Improvements The exterior placement or installation of solar energy devices, including panels, collectors, associated lines, wires, tanks, fittings, connections and related accessories shall be subject to the rules and regulations to the extent permitted by State and federal law.

Section 8.10 Noxious or Offensive Activity The Owner of any Lot shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced on his or her Lot or within his or her Residence, or any activity or condition which constitutes a nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment or quality of the property. The Association has the authority but not the obligation to prosecute and/or levy assessments for nuisances or annoyances that the Board deems not to affect the community-at-large.

Section 8.11 Hazardous Activities No activities shall be conducted anywhere within the Property that might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue [or fire pit apparatus or structure deemed fit for such purpose by the South Metro Fire Protection District](#) while attended and in use for cooking [or the purposes for which such apparatus or structure is designed](#). Owners shall be liable for any and all damage caused by fire, including but not limited to damage resulting from the negligent use of a barbecue or other outdoor cooking appliance.

Section 8.12 Annoying or Offensive Conditions No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; no odor shall be emitted on any Lot which is unreasonably noxious or offensive to others.

Section 8.13 Leasing Any Owner who leases his Lot shall be required to provide in his Lease that the terms of the lease or occupancy shall be subject in all respects to the provisions of this Declaration, the Association's Articles of Incorporation, Bylaws and rules and regulations, copies of which should be supplied to the lessee. No Owner may lease less than the entire Residence. Notwithstanding the foregoing, all lessees and occupants shall be responsible to comply with the Declaration, Articles of Incorporation, Bylaws and rules and regulations regardless of the terms of any such lease. The lease shall further provide that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Notwithstanding Owner's failure to specifically so state, any violation of the documents shall be enforceable by the Owner, the Association, or both as a default under the lease. All leases shall be required to be in writing and shall be for a minimum term of six (6) months, except in the event of a sale-leaseback or lease-purchase transaction.

Section 8.14 Parking No parking or storage of any type of recreational vehicle, house trailer, camper, camping trailer, boat trailer, running gear, boat, commercial vehicle as defined in the rules and regulations, truck exceeding a rated load capacity of one (1) ton, self-contained motorized recreational vehicle or accessories thereto, as well as any other vehicle or equipment as specified in the rules and regulations, shall be permitted on any Lot, parking area, or drive, unless specifically designated by the Association therefore or unless screened from view from the public right-of-way or surrounding properties, contained in an enclosed garage. Such vehicles may be parked temporarily for loading, cleaning, delivering, or in an emergency as may be further defined in rules promulgated by the Board, but in no case shall such a vehicle be parked in violation of this provision for more than 3 days. This restriction shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of residential dwellings or maintenance of the same while such construction/maintenance is being performed. No vehicles shall be parked on lawns or gravel surfaces of a Lot.

Section 8.15 Abandoned or Inoperable Vehicles No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Property except if screened from view from the public right-of-way or surrounding properties, contained in an enclosed garage. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other vehicle which does not have an operable propulsion system installed therein, or which has characteristics of being abandoned such as flat tires, broken windows or the like, or which has an invalid registration or expired license plates. Upon written request, an Owner must provide proof of registration to the Board for any vehicle parked within the Property, except for those parked in an enclosed garage. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be mailed- or personally delivered to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within 72 hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges and all damage and liability related thereto.

Section 8.16 Vehicle Repairs No extended maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, trailer, machine, or device may be carried on, except within a completely enclosed structure, including but not limited to a garage, which screens the sight and sound of the activity from the street and from other Lots. This provision shall not apply to washing, polishing, ~~or~~ vacuuming, or minor repairs that are accomplished within a day.

Section 8.17 Unsightly Conditions No unsightly article shall be permitted to remain on any Lots so as to be visible from adjoining Lots or the streets. Lots and Improvements thereon shall be maintained in a good, clean and attractive condition. No garbage, refuse, rubbish, or cuttings shall be allowed to accumulate on any Lot, nor shall it be deposited on the Property, or on any street within the Property unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. 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 provided however, that dumpsters, receptacles or storage containers may be permitted on a Lot temporarily, not to exceed thirty (30) days without written approval, in order to facilitate construction, remodeling or to prepare for moving ~~with~~

~~prior written approval of the Board.~~ No lumber, grass, plant waste, ~~sh~~erub or tree clippings, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or appropriately screened from view ~~from the public right-of-way or surrounding properties-~~

Section 8.18 Restrictions on Sewage Disposal Systems No cesspool, septic tank, or other sewage disposal system shall be installed within the Property without the prior written consent of the ~~ARC~~Architectural Review Committee. Any sewage disposal system installed for property within the Property shall be subject to applicable laws, rules, and regulations of any governmental authority having jurisdiction.

Section 8.19 Restrictions on Water Systems No individual water supply system shall be installed or maintained for any Lot within the Property unless such system is approved in writing by the ~~ARC~~Architectural Review Committee and is designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations of an applicable water and sanitation district or other governmental authority having jurisdiction.

Section 8.20 Air Conditioning and Heating Equipment No air conditioning or heating units shall be placed in the front of the house. The ~~ARC~~Architectural Review Committee may approve window mounted air conditioning units at its discretion.

Section 8.21. Enforcement of Restrictions. ~~The Association shall have the right to enforce the provisions under this and other Articles in-~~

ARTICLE 9 EASEMENTS

Section 9.1 Encroachments Each Lot shall be subject to: (1) an easement for minor encroachment of Residences, including without limitation, overhangs or fences onto adjoining Lots; (2) overhangs, as designed or constructed, by the Declarant; and (3) any encroachments occurring thereafter as a result of settling or shifting of any structure. A valid easement shall also exist for said encroachments and for their maintenance, repair, and replacement. If any structure is partially or totally destroyed and then rebuilt, the Owners of the Lots agree that such minor encroachments as rebuilt in their original configuration shall be permitted and that a valid easement for the same shall exist.

Section 9.2 Construction Easements If any portion of an exterior wall of a Residence is situated within three (3) feet of any adjoining Lot line, a valid easement shall and does exist, three (3) feet in width along the adjoining Lot and adjacent to the said Lot line, which easement may be used for the purpose of construction, reconstruction and maintenance of said exterior wall of a Residence that is situated within three (3) feet from the nearest point of said easement. The Owner of any Lot subject to this easement shall not erect or build any structure upon or over said easement, which will interfere with the purposes of said easement.

Section 9.3 Utility and other required easements Each lot shall be subject to other easements as required by law.

ARTICLE 10 INSURANCE

Section 10.1 Fidelity Insurance The Association shall maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity bonds or policies shall meet the following requirements:

- (a) all such fidelity bonds or policies shall name the Association as an obligee; and
- (b) all such fidelity bonds or policies shall be written in an amount at least equal to the greater of (i) the estimated maximum of funds, including reserves, in the custody of the Association at any given time or (ii) two (2) months' aggregate assessments on all Lots plus reserves; and
- (c) such fidelity bonds or policies shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 10.2 Director and Officer Liability Insurance The Association shall purchase Directors' and Officers' insurance in an amount reasonably necessary to protect the Directors and Officers as determined by the Board from time-to-time.

Section 10.3 Other Insurance The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.4 Deductibles Any loss falling within the deductible portion of such policy shall be a common expense shared by all of the Owners. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner or their tenants, guests, invitees, licensees or agents, and assess such deductible portion or uninsured portion of a loss as a ~~an~~ Default Assessment against such negligent Owner and his Lot, subject to all provisions of this Declaration applicable to such Assessments.

Section 10.5 Notice of Cancellation If the Insurance described in this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association shall promptly cause notice of that fact to be hand delivered, or sent by United States Mail, postage prepaid, to all Owners.

Section 10.6 Owner's Personal Liability and Property Insurance Each Unit Owner shall be responsible to carry their own adequate property, fire, and personal liability insurance on their Lot and the structures and Improvements thereon.

ARTICLE 11 GENERAL PROVISIONS

Section 11.1 Enforcement The Association, or any Owner after notice to the Board, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this

Declaration- Failure by the Association or by any Owner to enforce any rights hereunder shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.2 Amendment Except as otherwise provided by the Act or this Declaration, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by vote or agreement of Owners holding a majority of the votes in the Association, based upon one vote per Lot. Amendments to the Declaration shall be executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of such designation, by the President of the Association and recorded in the Arapahoe County Clerk and Recorder's Office.

Section 11.3 Term of the Declaration The provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall run with and bind the land in perpetuity.

Section 11.4 Termination This Declaration shall not be revoked nor shall the Association be dissolved unless such action is approved in writing by Owners representing eighty percent (80%) or more of the total votes in the Association. Such revocation shall be effective when duly recorded in the office of the Clerk and Recorder of Arapahoe County; provided, however that any amendment or revocation must comply with the statutes of Colorado and the resolutions and ordinances of Arapahoe County, Colorado and any other governmental entity having jurisdiction over the Property.

Section 11.5 Interpretation The terms of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration of the ~~Common~~ Interest Community and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.6 Singular Includes Plural Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, the feminine, and neuter.

Section 11.7 Captions All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.8 Conflict of Provisions In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of conflict between the provisions of the Articles of Incorporation and the Bylaws, the Articles shall control.

Section 11.9 Registration Each Owner and each First Mortgagee shall register his or her mailing address with the Association. Unless otherwise provided in the Act, the Declaration, Articles or Bylaws of the Association, all notices or demands intended to be served upon an Owner shall be sent by First Class Mail, postage prepaid, addressed in the name of the Owner at

such registered mailing address. Landlords shall provide to the Association the contact information of the tenants residing within the Property within 30 days of the tenants' occupation of the property.

Section 11.10 Challenge to this Amendment All challenges to the validity of this Declaration must be made within one (1) year after the date of recording of this Declaration.

Section 11.11 Severability Invalidation of any one of the provisions, covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force an effect.

Section 11.12 Notifications Notifications, including votes, required herein may be delivered by electronic means to the extent that electronic notification is permissible by applicable law.

In witness whereof, the undersigned, being the President and Secretary of the Cherry Creek Vista South Homeowners Association, hereby certify that the Association has obtained approval of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cherry Creek Vista South, a residential community, from Owners representing at least majority of the votes in the Association.

Dated: _____

Cherry Creek Vista South Homeowners Association
a Colorado nonprofit corporation

By: _____,
President

By: _____,
Secretary

STATE OF COLORADO)
)ss.
COUNTY OF ARAPAHOE)

The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cherry Creek Vista South, was acknowledged before me by _____, as President and _____ as Secretary of the Cherry Creek Vista South Homeowners Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

Exhibit A
The Property

Cherry Creek Vista South Homeowners Association
Neighborhood Map

