

**MASTER DECLARATION  
OF  
EASEMENTS, COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
QUANTUM 56**

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**MASTER DECLARATION  
OF  
EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
QUANTUM 56**

This MASTER DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS FOR QUANTUM 56 (this “**Declaration**”) is made as of the 10th day of November, 2023 (the “**Effective Date**”), by Quantum 56 Phase I LLC, a Delaware limited liability company (the “**Declarant**”).

**WHEREAS**, the Declarant is the owner in fee simple and developer of approximately 60.3 acres of real property (the “**Property**”) located in Adams County, Colorado, as more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes;

**WHEREAS**, the Declarant desires to (i) subject the Property to certain easements, covenants, conditions and restrictions, pursuant to which the “**Parcels**” (as defined hereinbelow) shall be held, improved, maintained, and conveyed;

**WHEREAS**, the Declarant intends that the Property shall be developed, owned, operated, and maintained in accordance with the provisions of this Declaration;

**WHEREAS**, all of the property subject to this Declaration is restricted to non-residential use (as defined by the Colorado Common Interest Ownership Act (the “**Act**”) at C.R.S. §38-33.3-103(26)). Accordingly, the Declaration is not governed by or subject to the Act pursuant to §38-33.3-121;

**WHEREAS**, the Property is included in the boundaries of the Quantum 56 Metropolitan District (the “**District**”) and, pursuant to Section 32-1-1004(8), C.R.S., and the District’s Service Plan, approved by Adams County, Colorado on March 22, 2022, the District is empowered to furnish covenant enforcement, easement services, and design review services, as described herein, and to us revenues that are derived from the Property to provide such services;

**WHEREAS**, the District has or will duly adopt a resolution (i) acknowledging the District’s power to enforce covenants pursuant to state statute and the intention of the District to provide for uniform enforcement of the Declaration and the uniform provision of design review services and (ii) authorizing the District to facilitate such uniformity in the provision of covenant enforcement and design review services throughout the Property;

**WHEREAS**, this Declaration provides for the overall administration of the Property; and

**WHEREAS**, the purpose of submitting the Property to the provisions of this Declaration is to provide for the preservation and enhancement of the values and amenities of the Property and to provide for a common scheme for the proper and uniform development, design and use thereof.

**NOW, THEREFORE**, in consideration of the premises and covenants herein contained, the undersigned does hereby declare that the Property shall be owned, held, sold, transferred, demised, used, improved, conveyed and occupied subject to the covenants, conditions, restrictions,

easements, uses, privileges, charges and liens hereafter set forth, all of which shall run with the Property and shall be binding on all parties having or acquiring any right, title and interest therein, their successors or assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I DEFINITIONS**

The following words when used in this Declaration or any supplement or amendment hereof (unless the context shall prohibit or clearly indicate a contrary meaning) shall have the following meanings:

“*Articles*” shall mean the articles of incorporation of the Association.

“*Association*” shall mean Quantum 56 Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

“*Association Board*” shall mean the Board of Directors of the Association.

“*By-Laws*” shall mean the by-laws of the Association.

“*CERCLA*” See the definition of Hazardous Materials.

“*Committee Member*” shall mean a member of the Design Review Committee.

“*Common Area Improvement Maintenance*” See **Section 5.2.01**.

“*Common Area Improvements*” shall mean those areas of land or interests therein or fixtures or Improvements within the Property intended for the enhancement of all Parcels, and for the non-exclusive use and benefit of the Owners and Occupants, and which are more particularly described in Section 5.1. Common Area Improvements may be owned by the Declarant or the Association.

“*Cost of Maintenance*” See **Section 5.2.02**.

“*County*” shall mean Adams County, Colorado.

“*Declarant*” shall mean, Quantum 56 Phase I LLC, and its respective assigns if and only if Declarant expressly assigns its rights hereunder by written instrument duly filed in the Real Property Records of Adams County, Colorado.

“*Declaration*” shall mean this Declaration of Easement, Covenants, Conditions and Restrictions for Quantum 56, as the same may be amended and/or supplemented from time to time.

“*Default Notice*” See **Section 9.3.03**.

“*Design Review Committee*” shall mean, prior to the Turnover Date, the Declarant and, after the Turnover Date, the committee described in **Section 6.8** or, if no committee is constituted as described in **Article VI**, the Association Board.

“**District**” shall mean Quantum 56 Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, organized and existing pursuant to Title 32, C.R.S., and the Service Plan, and its successor or assigns of the rights and duties of the District under this Declaration. Each such assignment or transfer of the District’s obligations under this Declaration, if any, shall be effective upon the recording in the real property records of the County of a document of transfer or assignment, duly executed by the District.

“**District Board**” shall mean the Board of Directors of the District.

“**District Property**” shall mean any and all real or personal property, including infrastructure and improvements, and other properties accepted by the District on recorded plat, replat, amended plat, deed, easement, or other document to be owned, leased, or constructed on behalf of the District in development of the Property. District Property shall be owned, operated, and maintained by the District as public property for the benefit and use of the Owners, Occupants, and visitors of the District consistent with its intended function and use. Notwithstanding anything herein to the contrary, the District Property shall not be subject to design review or any fees, rates, tolls, charges, or assessments imposed pursuant to this Declaration.

“**Environmental Requirements**” shall mean all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities or any other political subdivisions in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of any portion of the Property, the Property (or any portion thereof) or the use of Property (or any portion thereof), relating to pollution, the protection or regulation of human health, the environment or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, industrial, toxic or hazardous substances, waste or Hazardous Materials into the environment (including, without limitation, ambient air, surface water, ground water, land or soil).

“**First Mortgagee**” shall mean a Mortgagee under a first Mortgage.

“**Hazardous Materials**” shall mean any substance which is or contains (i) any “hazardous substance” as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) (“**CERCLA**”) or any regulations promulgated under CERCLA; (ii) any “hazardous waste” as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (“**RCRA**”) or regulations promulgated under RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); (iv) gasoline, diesel fuel or other petroleum hydrocarbons; (v) asbestos and asbestos-containing materials; in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity under Environmental Requirements or the common law or any other applicable laws relating to the Property. Hazardous Materials shall include, without limitation, any substance, the presence of which oil the Property (A) requires reporting, investigation or remediation under Environmental Requirements, (B) causes or threatens to cause a nuisance on the Property or adjacent property or

poses or threatens to pose a hazard to the health or safety of persons on the Property or adjacent property or (C) which, if it emanated or migrated from the Property, could constitute a trespass.

**“Hazardous Materials Activity”** See **Article VIII**.

**“Improvement”** or **“Improvements”** shall mean all structures or other improvements of any kind whatsoever whether above or below grade, including, but not limited to, buildings, utility installations, storage, loading and parking facilities, walkways, driveways, landscaping, signs, site lighting, exterior painting, screen enclosure, site grading and earth movement and any exterior additions, changes or alterations thereto.

**“Master Site Plan”** shall mean the site plan for the Property attached hereto as **Exhibit B**.

**“Mortgage”** shall mean a Mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to the Property or any Parcel.

**“Mortgagee”** shall mean the holder or beneficiary of a Mortgage. A first Mortgage is a Mortgage, the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

**“Occupant”** or **“Occupants”** shall mean any Person legally entitled to occupy and use any part or portion of a Parcel.

**“Owner”** shall mean the record Owner, other than Declarant, the District, or any other governmental or quasi-governmental entity, of a fee simple title in and to any Parcel, provided that:

(a) In the event of the assignment, transfer or conveyance of the whole of the interest of an Owner in and to the Parcel in which such Owner has an interest, without retaining any beneficial interest other than under the terms of a deed of trust or Mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate or other possessory interest, then the powers and obligations conferred upon such Owner under this Declaration shall be deemed assigned, transferred or conveyed to and the obligations thereunder assumed by the assignee or transferee of such Parcel, it being understood and agreed that the assignment, transfer or conveyance of such Parcel shall be subject to the terms of this Declaration.

(b) If, subject to **Section 4.3.04**, a Parcel is subdivided into one or more separate legal lots by recorded plat (or amendment thereto) or deed, the record holder(s) of each such legal lot shall be considered an “Owner” hereunder.

(c) If an Owner shall transfer its present interest in a Parcel or a portion of such interest in such a manner as to vest its present interest in such Parcel in more than one person (other than by creation of a separate legal lot as contemplated in clause (b) above), then not less than fifty-one percent (51%) in interest of such transferees shall designate one (1) of their number to act on behalf of all of such transferees in the exercise of the powers granted to such Owner under this Declaration. So long as such designation remains in effect, such designee shall be an Owner hereunder and shall have the power to



bind such Parcel and such other transferees, and such other transferees shall not be deemed to be Owners. Any such designation must be in writing and served upon Declarant and the other transferees hereunder within ten (10) days after such transfer. If such transferees of any such Parcel cannot agree upon a party to designate or if they fail to designate a single Person to act for such Parcel within such ten (10)-day period, the consent or approval of such transferees of such Parcel shall not be necessary for any matters under this Declaration until such time as written notice of such designation is given and recorded in the Records.

(d) Whenever the rights, powers and obligations conferred upon any of the Owners are vested in another Person pursuant to the provisions of subsections (a), (b) or (c) above, the transferor shall be released or discharged from the obligations thereafter accruing under the terms of this Declaration, and the transferee(s) of such interest shall be bound by the covenants and restrictions herein contained accruing following the transfer.

**“Owner’s Maintenance”** See **Section 4.1.01**.

**“Parcel”** or **“Parcels”** shall mean any part of the Property, the anticipated size and dimensions of which are generally shown on the Master Site Plan and the precise legal description may be established by a plat of the Property to be filed by Declarant with the appropriate governmental authorities or in the Parcel Deed conveying such Parcel, but shall not include District Property or property of the County or another political subdivision of the State of Colorado. A Parcel may also be established by the Declarant by an instrument in writing executed, acknowledged and recorded by the Declarant which designates a part of the Property as a separate Parcel for the purposes of this Declaration. If, subject to **Section 4.3.04**, a Parcel, once established, is divided into two (2) or more separate legal lots by recorded plat (or amendment thereto) or deed, each of such separate lots shall thereafter be considered a “Parcel” hereunder.

**“Parcel Deed”** shall mean each deed of the Declarant conveying a Parcel or portion thereof to or for the benefit of an Owner.

**“Parcel Site Plan”** shall mean the Parcel Site Plan provided for in **Section 3.3**.

**“Person”** shall mean a natural person, corporation, trust, partnership, limited liability company, association, joint venture, or other legal or commercial entity or combination thereof.

**“Plans and Specifications”** See **Section 3.3**.

**“Property”** shall mean that certain real property located in Adams County, Colorado, legally described on **Exhibit A**, attached hereto and made a part hereof, together with any additional real property made subject to this Declaration, and any and all easements appurtenant thereto.

**“Proportionate Share”** shall mean, as to a given Owner, a fraction, the numerator of which is the total number of acres within such Owner’s Parcel (inclusive of all easement areas, public or private, within such Parcel), and the denominator of which is the total area of all Parcels (excepting therefrom the any Common Area Improvements, District Property, and other property dedicated to the County or another governmental or quasi-governmental entity).

“*Records*” shall mean the Official Public Records of Real Property of Adams County, Colorado.

“*Turnover Date*” shall mean the earlier to occur of either of the following events:

- (a) The date that is six (6) months after the date the Declarant no longer owns any portion of the Property;
- (b) The date that Declarant elects to relinquish control of the Association Board in accordance with the Articles; or
- (c) The date of foreclosure by a First Mortgagee under a Mortgage secured by at least 51% of the Property (calculated exclusive of the Common Area Improvements).

## **ARTICLE II PROPERTY SUBJECT TO DECLARATION**

The Property, and all rights appurtenant thereto, are and shall be held, transferred, sold, conveyed, and occupied subject to the terms and conditions of this Declaration.

The Declarant may, at any time prior to the Turnover Date, subject other property now or hereafter owned by the Declarant to this Declaration (i) if such other properties are subject to inclusion by the District, and an Order for Inclusion of the subject properties has been granted to the District by the District Court in and for Adams County, Colorado; and (ii) by executing an instrument which makes such other properties subject to this Declaration and recording the same in the Records. The Declarant may execute such instrument without the consent of the Association or any Owner of any of the foregoing.

The Declarant reserves the right, in its sole discretion, to determine at any time prior to the Turnover Date that any portion of the Property owned by the Declarant should be withdrawn from the applicable covenants, benefits, and burdens established pursuant to this Declaration; provided, however, from and after the date of the first Parcel Deed, the withdrawal of any other portion of the Property that is encumbered by any easement shall not affect the easement rights granted herein and none of the District Property may be withdrawn, provided further, that this right to withdraw does not extend to any property that has been designated as a Common Area Improvement. . The Declarant may withdraw such portion of the Property from this Declaration by execution of a statement indicating such intent and containing a legal description of such portion of the Property. Such statement shall be recorded amongst the Records. The Declarant reserves the right until the Turnover Date to so amend and supplement this Declaration without the consent of the Association, any Owner, or any Mortgagee of any of the foregoing. Upon the recording of the aforementioned statement in the Records, the property described in such statement shall no longer be a part of the Property and may be developed and/or used by the Declarant free of the restrictions and provisions set forth in this Declaration.

### ARTICLE III REGULATIONS GOVERNING IMPROVEMENTS

Section 3.1 **Improvements Generally**. No Improvement shall be constructed, erected, placed, altered, maintained, or permitted on any Parcel unless it is approved by the Design Review Committee in the manner provided herein.

Section 3.2 **Zoning Ordinances**. The Design Review Committee shall not be restricted in the exercise of its respective powers and rights under the provisions of this **Article III** by the limitations set forth in zoning and other laws, ordinances, and regulations affecting the Property, nor shall any approval or consent by the Design Review Committee hereunder be deemed to satisfy (or to constitute the Design Review Committee's representation, warranty or opinion as to the satisfaction of) any requirements under such laws, ordinances, or regulations. In the event of any conflict between the provisions of this Declaration and the provisions of such ordinances or regulations, or any other County ordinance or regulation or state law, regulation, or agreement applicable to the Improvements, the more restrictive of the foregoing shall control.

Section 3.3 **Submissions to Declarant or Design Review Committee**. To secure the approval of the Design Review Committee for the right of an Owner to construct Improvements on a Parcel or Parcels, the Owner shall first deliver to the Design Review Committee in a form reasonably satisfactory to same, the following information:

(i) A Parcel Site Plan showing, among other things, the location and dimension of all intended Improvements, including (a) building(s), (b) other structures, (c) motor vehicular parking areas and facilities, including the number and size of parking spaces, (d) loading and storage facilities and areas, (e) areas to be landscaped, (f) signs, (g) lighting fixtures, (h) means of ingress and egress, (i) curb cuts, (j) traffic patterns, (k) drives and driveways and (l) all yard requirements and setbacks (if any);

(ii) Drawings and specifications of all exterior surfaces, showing elevations and including the color, quality and type of exterior construction materials (including samples);

(iii) Grading and drainage plans, including the invert elevation of all sanitary and storm sewer connections and the location of all utility connections;

(iv) A landscaping plan;

(v) The type, style, size and candle power of all outdoor lighting fixtures;

(vi) Drawings and design specifications of all proposed signs including the colors thereof and the quality and type of materials to be used and the manner of illumination (including samples);

(vii) Proposed use of such building(s) and such Parcel;

(viii) An interior floor plan describing the general uses for each portion of the interior of the building(s) to be located upon such Parcel; and

(ix) All such other information as may be reasonably required which will enable the Design Review Committee to determine the location, scale, design, character, style and appearance of the Owner's intended Improvements.

The Owner shall only be required to submit those of the foregoing materials as may be applicable to the type of improvement proposed to be made by such Owner. The Owner shall supply as many sets of the foregoing materials (as the same may be amended or modified in accordance with the provisions of this **Article III**, the "**Plans and Specifications**") as shall reasonably be requested by the Design Review Committee to accomplish its purpose hereunder. For purposes of this **Article III** only, "*Owner*" shall be deemed to include a Person who has contracted to purchase one or more Parcels and who is attempting to secure approval of Plans and Specifications prior to becoming an Owner. The Design Review Committee may adopt a schedule of reasonable fees for processing applications for approval of proposed Plans and Specifications, which fees, if any, shall be payable to the Design Review Committee at the time Plans and Specifications are submitted.

Plans for architectural or landscaping Improvements must bear the seal of a registered architect or a landscape architect licensed in the State of Colorado. All construction, erection, placement and maintenance of Improvements must be in substantial accordance with approved Plans and Specifications. The Design Review Committee may inspect any construction, erection, placement and maintenance of Improvements and shall have the right, but not the obligation, to require the correction of defects not in substantial compliance with approved Plans and Specifications.

Notwithstanding anything contained herein, the Vertical Phase I Improvements generally described on Lots 1, 2, and 3 on the Master Plan attached as hereto as Exhibit B, and the Vertical Phase 2 Improvements described on Lots 4, 5 on 6 generally described on the Master Plan attached hereto as Exhibit B. shall be deemed approved by the Design Review Committee without the need to follow the submission requirements set forth in this **Article III** unless substantially modified from the Master Site Plan.

Section 3.4 **Time for Review of Plans and Specifications**. Within thirty (30) days after delivery to the Design Review Committee of all required Plans and Specifications, the Design Review Committee shall notify Owner in writing whether such Plans and Specifications are approved or disapproved. Any such disapproval shall set forth the reason or reasons for such disapproval. Should the Design Review Committee fail to approve or disapprove the aforesaid Plans and Specifications in writing within the said thirty (30)-day period; such approval shall be conclusively presumed to have been granted; however, this assumption of approval in no way extends to unsubmitted or revised Plans or Specifications. No construction of the Improvements provided for in the submitted Plans and Specifications shall be commenced until the expiration of the aforementioned thirty (30) day period or the receipt of the Design Review Committee's written approval of Plans and Specifications, whichever shall first occur.

Section 3.5 **Time for Review of Revised Plans and Specifications**. If the Design Review Committee shall disapprove any part of the Plans and Specifications submitted as aforesaid, the Owner may revise its Plans and Specifications to address such disapproval and submit the same to the Design Review Committee for approval. Thereafter, the Design Review Committee shall have fifteen (15) days within which to review such revised Plans and Specifications and either approve or disapprove such revised Plans and Specifications. Should the Design Review Committee fail to advise the Owner in writing of whether or not such revised Plans and Specifications are approved or disapproved within such fifteen (15)-day period, then approval shall be conclusively presumed to have been granted; however, such presumed approval shall in no way apply to revised Plans or Specification that were not submitted for approval.

Section 3.6 **Changes in Approved Plans and Specifications**. An Owner seeking approval of Plans and Specifications shall secure the approval of the Design Review Committee to any material change or revision in the approved Plans and Specifications in the manner provided in this Article III for the approval of Plans and Specifications, except that the Design Review Committee shall review such changes or revisions within ten (10) days after receipt of such revision (and the Design Review Committee shall endeavor in good faith to review such revisions within such shorter period of time that the Owner submitting the same may reasonably request, provided such period affords the Design Review Committee with reasonable time to review the same). Should the Design Review Committee fail to advise Owner in writing of whether or not such revisions are approved or disapproved within the ten (10)-day period described above, then approval shall be conclusively presumed to have been granted; however, such presumed approval shall in no way apply to revised Plans or Specification that were not submitted for approval.

Section 3.7 **Review and Approval Standards**. The Design Review Committee shall be given the broadest discretion in making decisions regarding any set of Plans and Specifications submitted to it. In reviewing the Plans and Specifications, the Design Review Committee shall consider, among other things: each Owner's overall plan and design; location, type and quality of physical systems and utilities; yard requirements; landscaping; signage; storage; building and other Improvement orientation; curb cuts; fences; parking and other salient features of the proposed development.

The Design Review Committee shall at all times endeavor to establish a harmonious and complementary business environment that is both visually attractive as well as functional. In attempting to achieve such goal, each Owner recognizes that the following parameters shall govern the ongoing development of the Property:

3.7.01 The uses to which the Property may be subjected are varied; that is, the Property made be used for a wide variety of office, research, light industrial, industrial and commercial purposes. The Design Review Committee shall accordingly take into consideration the different character and characteristics of each type of development, recognizing, for example, that office users' needs and requirements may differ in significant ways from those of industrial users. Owners shall therefore recognize that the approval (or disapproval), for example, of an industrial-user Owner's Plans and Specifications may not necessarily indicate approval (or disapproval) of an office-user Owner's Plans and Specifications, which may nevertheless be substantially similar to those approved.

3.7.02 The approval (or disapproval) of an Owner's Plans and Specifications does not necessarily indicate approval (or disapproval) of another Owner's substantially similar Plans and Specifications, even if both Owners are similar users, if, in the sole discretion of the Design Review Committee, the developing character of the Property does not, at that time, make such approval appropriate or consistent with the general parameters described herein.

3.7.03 Notwithstanding anything contained herein, at no time shall the Design Review Committee have any obligation to approve Plans and Specifications of any Owner which are inconsistent with any applicable governmental laws, ordinances, or regulations applicable to the Property. However, for the avoidance of doubt, the Design Review Committee shall review the Plans and Specifications submitted by an Owner solely to confirm that they comply with the provisions of this Declaration, and the Design Review Committee shall not be responsible for confirming (and any approval of the Plans and Specifications issued by the Design Review Committee shall not be deemed a representation or warranty by it) that the Plans and Specifications comply with applicable governmental laws, ordinances or regulations applicable to the Property or are otherwise suitable for the Owner's purposes.

Section 3.8 **Liability**. Neither the Declarant, the Association, the District, nor the Design Review Committee, nor their respective directors, officers, agents, employees, consultants, members, successors, and assigns shall be liable in damages to any Owner or to any other person submitting Plans and Specifications to any one or more of them for approval by reason of a mistake in judgment arising out of, or made in connection with, the approval, disapproval or failure to approve any Plans and Specifications, or arising out of the possible inconsistent treatment of Owners or other submitters of Plans and Specifications. Every Person who submits to the Design Review Committee Plans and Specifications for approval as herein provided agrees that each such Person waives all claims against and agrees that such Person will not make any claim or bring any action or suit for any relief against, the Design Review Committee or its directors, officers, agents, employees, consultants, members, successors, or assigns.

Section 3.9 **Assignment of Declarant's Powers and Rights to Design Review Committee**. The Declarant shall, until the Turnover Date, be the Design Review Committee hereunder and shall have the absolute right to exercise the powers of the Design Review Committee set forth in this **Article III**, unless and until the Declarant, in its sole discretion, determines to assign its rights as the Design Review Committee to the Association at any time prior to the Turnover Date. If Declarant elects to delegate or assign to the Association the Declarant's powers and rights under this **Article III**, then the Association Board shall accept such delegation or assignment and shall thereafter be seated as the *ex officio* Design Review Committee unless or until the Association Board resolves to establish a separate committee, constituted of no more than five (5) members, to serve as the Design Review Committee. However, the Declarant shall not be required to make such delegation and assignment prior to the Turnover Date (and, on the Turnover Date, such delegation and assignment shall be deemed made regardless of whether the Declarant or the Association execute any writing to affect the same).

Section 3.10 **District Assumption of Powers and Rights to Design Review Committee**. At any time following the Turnover Date, the Association may request in writing that the District assume the powers, rights, and responsibilities of the Design Review Committee. If the District Board resolves to assume such powers, rights, and responsibilities, the District Board

shall thereafter be seated as the *ex officio* Design Review Committee unless or until the District Board resolves to establish a separate committee as constituted in **Section 3.9**, above. "Design Review Committee," as such term is sometimes used herein, shall mean either the Declarant, the Association Board or the District Board sitting *ex officio*, or a separate committee of no more than five (5) Committee Members, whichever is entitled to exercise the powers of the Design Review Committee under this Article III.

Section 3.11 **Damage to Property**. In the event the Improvements to be constructed by any Owner, or the methods of construction to be employed by such Owner, shall be reasonably determined by the Design Review Committee to pose a risk of damage to any of the Common Area Improvements, other Improvements, the utility system, surface water management system, or any other portions of the Property, the Design Review Committee shall have the right to cause such Owner to post a security deposit, bond or other security deemed reasonably necessary to secure the obligations of such Owner to repair any damage caused to portions of the Property.

#### **ARTICLE IV PARCEL MAINTENANCE, USE RESTRICTIONS, AND INSURANCE**

##### **Section 4.1 Owner's Maintenance and Insurance**

4.1.01 Subject to the provisions of this **Article IV**, each Owner shall at all times maintain, repair, replace and renew or cause to be maintained, repaired, replaced or renewed, in good and slightly first-class condition (except in the event of casualty, which is covered by the provisions of **Section 4.1.02**), all Improvements on its Parcel and the area contained within the boundary lines of each Owner's Parcel. Such duties and obligations shall hereafter be referred to as "*Owner's Maintenance*." Owner's Maintenance, in order to maintain each Parcel in a first-class condition, shall include, but not be limited to, the maintenance of all visible exterior surfaces of all buildings and other Improvements; the prompt removal of all paper, debris and refuse from all areas of its Parcel; the repair, replacement, cleaning and relamping of all signs and lighting fixtures and the mowing, watering, fertilizing, weeding, replanting and replacing of all landscaping and drainage swales. The Administrator shall have the right to publish reasonable rules and regulations (and from time to time, amendments or supplements thereto) governing the quality and quantity of Owner's Maintenance required of all Owners, which rules and regulations shall be enforced by the Administrator in a uniform and non-discriminatory manner.

4.1.02 If any Improvement is damaged or destroyed, the Owner of such Improvement shall promptly perform such work as may be necessary to render the Improvements in safe condition and shall, within a reasonable time after such damage or destruction (taking into account any necessary settlement with its property insurance company and time required to prepare plans and specifications and obtain requisite approvals, including necessary approvals from the Design Review Committee, applicable governmental authorities and Mortgagees), at its option in its sole discretion, either restore such Improvement to the condition existing prior to such damage or destruction (with such changes thereto as such Owner may elect in its discretion to make, subject to the rights of the Design Review Committee to approve the Plans and Specifications therefor in accordance with **Article III**) or, in the alternative, raze and remove such Improvement and landscape the Parcel pursuant to a landscaping plan approved as provided in **Article III**. In the event an Owner wishes to deviate in any material respect from the prior Plans and Specifications,

as approved, application must be made to the Design Review Committee for the approval of new Plans and Specifications in accordance with **Article III**.

4.1.03 In the event an Owner does not commence construction of Improvements within twelve (12) months of the date of the delivery of the Parcel Deed to the Owner, unless otherwise provided in a Parcel Deed, the Owner shall landscape the Parcel with no less than an appropriate ground cover, such as grass or sod, and thereafter shall maintain such ground cover in a clean, neat and safe condition, keeping same free of weeds and mowed until the commencement of construction of such Improvements. The aforesaid twelve (12) month period shall be extended in accordance with **Section 9.10** or otherwise with the written approval, in its sole discretion, of the Administrator. Once construction of Improvements is commenced, the Owner thereof shall thereafter diligently prosecute the work in connection with such Improvements to completion. All contractors and subcontractors performing construction on a Parcel shall, to the extent required by applicable law, be licensed to perform such work by applicable governmental authorities. During the period of construction, all construction debris and waste must be removed at regular intervals from the Parcel and adjoining streets. Any surplus construction materials or equipment must be promptly removed from the Parcel and adjoining streets at the end of such period. Construction of any building shall be deemed complete upon the issuance of a certificate of occupancy (for the core and shell of such Improvements) by the City.

Section 4.2 **Administrator's Right to Perform Owner's Maintenance**. If an Owner shall fail to perform Owner's Maintenance, the Administrator may give written notice to the Owner specifying the manner in which the Owner has failed to so perform. If such failure has not been corrected within thirty (30) days after receipt by Owner of such notice, or if such work which is incapable of being completed within such thirty (30) day period has not been commenced within such period and thereafter diligently prosecuted to completion, the Administrator may enter upon the Parcel and perform such work.

The Administrator, by reason of performing such Owner's Maintenance, shall not be liable or responsible to the Owner for any loss or damage thereby sustained by the Owner or anyone claiming by or through the Owner, except for its gross negligence or wanton or willful acts. The cost of such work shall be assessed against and paid by the Owner within thirty (30) days of the date on which a statement is delivered to the Owner. The statement shall specify the work performed by the Administrator and the costs thereof. Such statement may include, at the Administrator's option, a charge of ten percent (10%) of the direct costs thereof to help defray the Administrator's administrative expenses connected with performing such work. Such amounts shall constitute an assessment against such Owner in accordance with **Article VII** hereof, and all the provisions of said **Article VII** (including **Section 7.2**, **Section 7.4** and **Section 7.5**) shall apply to the aforesaid assessment.

Section 4.3 **Use Restrictions**. The Property shall be used only as and for warehouse and industrial use. In no event shall the Property be used for any of the prohibited uses set forth on **Exhibit C** attached hereto. The Declarant does hereby declare that the following provisions shall be applicable to the Property, and that the Property shall be transferred, demised, sold, conveyed and occupied subject to the restrictions set forth in **subsections 4.3.01 through 4.3.16**, inclusive.



4.3.01 No temporary structures, buildings, outhouses, sheds, tents or trailers of any kind shall be erected, altered, placed or permitted to remain on any portion of the Property, except for the temporary construction facilities of the Declarant or Owners and as expressly provided for herein. Temporary structures or trailers may be erected or placed on any Parcel only for a reasonable time during the period of construction of permanent Improvements, for use as an office and supply shelter. The temporary structure shall be used only during the period of construction of permanent Improvements on the Parcel and must be removed within thirty (30) days after completion of such construction. Any surplus material from construction must be removed from the Parcel within such thirty (30) day period.

4.3.02 No noxious, unpleasant or offensive activity inconsistent with a warehouse and industrial development shall be carried on upon any portion of the Property which can be construed to constitute a nuisance such as, but not limited to, unsightliness, the excessive emission of noise, odors, liquids, gases, dust, fumes or smoke, vibration, electromechanical disturbance and radiation, electromagnetic radiation, any form of air or water pollution or the emission of odorous, toxic or noxious matter or hazardous effluents. All uses must be operated in such a manner so as to not generate noise vibrations, heat or glare which is perceptible beyond the foundation perimeter of the Improvement or enclosed yard area. All lighting shall be designed and maintained so that illumination is confined within the Parcel boundaries and does not allow or cause any bright or direct illumination upon adjacent Parcels. All lighting fixtures are subject to the approval of the Design Review Committee as provided in **Article III**. Each Owner shall be liable to the Declarant, the Association, and/or other Owners for any damage caused to the Common Area Improvements, personal property of the Declarant or the Association or property of another Owner due to the operation of its business or the conduct of its tenants, employees, invitees or licensees.

4.3.03 Any dispute as to whether any use complies with the covenants and restrictions contained in this Declaration or whether such use constitutes a nuisance shall be referred to the Design Review Committee for determination. The Design Review Committee shall approve or disapprove any proposed use applications based upon a determination that the proposed use will not have a detrimental effect upon the common scheme for the Property or Occupants thereof.

4.3.04 No Parcel shall be resubdivided without the approval of the Design Review Committee unless the number of Parcels resulting is less than the number of Parcels originally existing. Notwithstanding the foregoing, prior to the Turnover Date, the Declarant shall have the right to subdivide or redivide any portion of the Property in any manner, regardless of the size or number of resulting Parcels. Such prohibition against resubdivision by Owners other than the Declarant shall not be construed to limit:

(a) The right of any Owner to submit his Parcel or Improvements located thereon to a plan of condominium ownership, by the recordation of a Declaration of Condominium subject to this Declaration; or

(b) The right of any Owner to rent or lease all or a portion of his Parcel or the Improvements located thereon.

4.3.05 Parking shall be restricted to the parking areas designated for such purpose on the applicable Parcel Site Plan. All Owners shall periodically resurface and regularly maintain the

surface of all parking areas, roadways, and other impervious surfaces in a dust-free, weather-proof condition.

4.3.06 Other than service animals, no animal, including, but not limited to, dogs, cats, livestock, reptiles or poultry of any kind shall be raised, bred or kept on the Property except in connection with laboratory use and then such animals must be kept within the confines of a building and the keeping of the animals shall not become a nuisance of any other Owner.

4.3.07 Nothing shall be done, stored, constructed within or removed from the Common Area Improvements except with the prior written approval of the Design Review Committee.

4.3.08 Antennas or other aerial or satellite reception dishes of any type shall require the prior written consent of the Design Review Committee, not to be unreasonably withheld. Notwithstanding the foregoing, the foregoing restriction shall not apply to any satellite dish or antennas used to receive video programming, broadband radio or wireless data service and internet access except in compliance with Section 207 of the Telecommunications Act of 1996 and the rules and regulations promulgated thereunder.

4.3.09 Notwithstanding anything to the contrary contained within this **Article IV**, no sewers, electrical lines, or other utility service lines or facilities for such utilities may be installed or relocated on the Property except as existing on the date hereof or hereafter approved by the Design Review Committee.

4.3.10 The Design Review Committee is hereby specifically granted the right to promulgate and enforce by legal means such reasonable rules and regulations as it may deem necessary to regulate all aspects of traffic flow and traffic patterns in order to minimize the impact of traffic within the Property and leading to and from the Property.

4.3.11 Every Owner shall have the right and easement of use, access to and enjoyment in and to the Common Area Improvements and such right and easement shall be appurtenant to and shall pass with title to every Parcel, subject, however, to the provisions of this Declaration and its exhibits, as the same may be amended and/or supplemented, and to the reasonable regulations governing use and enjoyment of the Common Area Improvements as may be adopted by the Administrator, which regulations shall be delivered to the Owners and enforced by the Administrator in a uniform and non-discriminatory manner.

4.3.12 Unless otherwise approved by the Design Review Committee, all storage, including that of equipment and machinery shall be within a fully enclosed building or located outside the building and properly screened provided any outdoor storage fifteen (15) feet or taller shall require the prior written approval of the Design Review Committee and provided the placement of vehicles as otherwise permitted herein shall be permitted without limitation by this Section. No loading of vehicles may occur outside of an Owner's Parcel boundary. All loading and servicing areas shall be paved.

4.3.13 All waste, trash and/or refuse shall be stored and maintained in closed containers screened from view by permanent structures, fencing and/or landscaping.

4.3.14 No septic tanks shall be permitted.

4.3.15 All lease agreements shall contain a provision notifying such lessee that the lessee's leasehold estate shall be subject to the covenants and restrictions imposed pursuant to this Declaration.

4.3.16 Except to the extent caused by events pursuant to **Section 9.10** hereof, casualty, condemnation, temporary periods for maintenance and repair, or as required by applicable governmental laws, ordinances, or regulations applicable to the Property, no Owner shall close or materially obstruct any interior roadways or points of access to public roads.

All approvals required under this **Section 4.3** shall be in writing. The Design Review Committee shall have the right to grant variances, exceptions, waivers, or similar modifications to the foregoing restrictions as deemed appropriate in its sole discretion.

Section 4.4 **Access Easement**. The Property, including every Parcel, the Common Area Improvements, and the District Property, is subject to a reciprocal, perpetual, non-exclusive easement in favor of the District and the Association, including their respective directors, officers, employees, agents, and contractors, for performing any of the actions contemplated in this Declaration. The rights and easements granted herein may be exercised only during reasonable hours and after reasonable notice to Owners, and in consideration of the purpose of the exercise of such rights and easements; except that no such notice shall be required for (i) routine landscape or hardscape maintenance; (ii) snow removal; (iii) any remediation related to non-compliance with the terms of this Declaration; and (iv) in emergency situations. The interior portion of structures are not subject to the easements provided for in this Section 4.4. In the exercise of the right under this easement, the Association and/or the District shall, to the extent practicable, minimize the adverse impact on portion of the Property, including any improvements thereon, and restore such Property to substantially the condition existing prior to such exercise of the rights under this easement.

Section 4.5 **Barrier Wall Easement**. Lots 2 through 4 (as depicted on Exhibits A and B) are subject to that certain Declaration of Barrier Wall Easements recorded in in the offices of the Clerk and Recorder of Adams County, Colorado on October 6, 2021, at Reception No. 2021000118445.

Section 4.6 **Blanket Well Easement**. The Property is subject to a blanket easement for access to groundwater monitoring and injection wells pursuant to that certain Declaration of Groundwater Wells & RCRA Landfill Access Easement recorded in in the offices of the Clerk and Recorder of Adams County, Colorado October 6, 2021, at Reception No. 2021000118446.

Section 4.7 **Owner's Responsibility for Damages to Well**. In the event an Owner, its employee, agent, guest, invitee, or lessee damages a Well, that Owner shall reimburse the District for any and all expenses arising from or related to the repairs. The District shall be responsible for coordinating necessary repair work.

## ARTICLE V COMMON AREA IMPROVEMENTS AND MAINTENANCE

Section 5.1 **Common Area Improvements.**

5.1.01 The Common Area Improvements shall include: (a) all landscape areas now or hereafter located on properties owned by the Declarant (prior to the conveyance thereof to an Owner under a Parcel Deed) or the Association; (b) Tracts A, B, C, D, E, and F on Exhibit A; (c) all irrigation and watering systems servicing the aforementioned landscape areas and along any interior roadways now or hereafter located within the Property; (d) Property entry features and Property signage, and all electrical fixtures and appliances appurtenant thereto; and (e) such portions of any interior roadway which may be created and which service more than one (1) Parcel, but which are not dedicated to the District, the County, or other applicable governmental or quasi-governmental entity (if any) and are not located within any Parcel.

5.1.02 Notwithstanding anything to the contrary contained in this Declaration, and in recognition of the fact that the Declarant shall have a continuing and substantial interest in the development and administration of the Property, the Declarant hereby reserves for itself and its successors and assigns, and the Association and all Owners recognize, agree to and acknowledge that the Declarant and its successors and assigns shall have, the right to the use of all Common Area Improvements, the title to which is not being conveyed by the Declarant, in conjunction with and as a part of its program of sale, leasing, constructing and developing of and within the Property without any cost to the Declarant for such rights and privileges. For purposes of this paragraph, the term "Declarant" shall include any Mortgagee which has loaned money to the Declarant, or its successor and assigns, if such Mortgagee, or its successor or assigns, acquires title to any portion of the Property as a result of the foreclosure of any Mortgage encumbering the Property securing any such loan to the Declarant or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as herein set forth are in addition to and in no way limit other rights or privileges of the Declarant, but such rights and privileges shall terminate upon the Turnover Date or upon such earlier date as the Declarant shall notify the Association in writing of the Declarant's voluntary written election to relinquish the aforesaid rights and privileges of use.

5.1.03 The Declarant shall have the right at any time prior to the Turnover Date to designate additional Common Area Improvements from the areas which were previously designated as other types of areas as may be reasonably required in connection with the overall operation of the Property, provided that, if such additional area is then owned by an Owner, such designation shall not be effective without the prior written consent of such Owner. The Association shall have the right to designate additional Common Area Improvements from areas which were previously designated as other types of areas with the prior written consent of the Declarant (if prior to the Turnover Date) and (if the area so designated is then owned by an Owner) the Owner of the Parcel on which such area is situated.

5.1.04 Notwithstanding anything contained herein to the contrary, but subject to the limitations set forth in **Article IX** and in this **Section 5.1.04**, the Declarant, prior to the Turnover Date, and the Association, after the Turnover Date, shall have the right, in its sole discretion, to alter, relocate or modify the Common Area Improvements and any Improvements, easements and use rights thereon or appurtenant thereto including, but not limited to, the right to redesignate, modify, alter, increase or (subject to the further provisions of this paragraph) decrease the specified uses of any Common Area Improvements in any manner determined reasonably appropriate determined by the Declarant without the consent of, but with notice to, the Association, the Owners or any Mortgagees for so long as Declarant or its successors and assigns shall own any portion of the Property; provided, however, in no event may any such alteration or modification limit the rights

of the Owners under **Article IX**, and in the event any easement or Common Area Improvement is modified or relocated, such relocated easement or Common Area Improvement shall be substantially equal in quality and performance as existed immediately prior to such modification or relocation and shall not impair the use or enjoyment of any Improvements on an Owner's Parcel. In the event the Declarant or the Association exercises any of the rights set forth in this **Section 5.1.04**, such party shall record an amendment to this Declaration in the Records, setting forth the portion of the Property affected by such alteration, relocation or modification.

**Section 5.2 Dedication of Common Area Improvements.** Common Area Improvements may be dedicated or conveyed to the District by the Declarant or the Association with notice to the Owners and Mortgagees. Any Common Area Improvements accepted by the District for ownership shall become District Improvements and maintained, modified, or relocated in a manner substantially consistent with their intended purpose for the benefit of the Owners. The District will not undertake any material modification to District Improvements or incur any significant expense, above routine expenses, in the maintenance, repair, or replacement of District Improvements without notice to and consent from the Owners and Mortgagees. Notwithstanding the foregoing, the District may adopt a reserve study indicating the anticipated usable lifespan and replacement requirements of District Improvements and, in doing so, may repair or replace District Improvements identified in such reserve study without written notice to or consent from the Owners and Mortgagees.

**Section 5.3 Administrator's Maintenance Obligations.**

5.3.01 Administrator shall, maintain, repair, replace and renew, or cause to be maintained, repaired, replaced or renewed, the Common Area Improvements in a good and working, clean, sightly and safe condition and in accordance with all applicable laws (collectively, the "***Common Area Improvement Maintenance***").

5.3.02 The cost and expenses of performing the aforesaid Common Area Improvement Maintenance shall include, but not be limited to, all reasonable and customary costs of materials, labor, supplies, equipment, insurance, taxes (including real estate and special assessment taxes on all real property interests owned by the Declarant or the Association, as the case may be) and water charges and other utilities (collectively, the "***Cost of Maintenance***"). In addition, Administrator shall have the right to engage a property manager to coordinate, oversee and/or perform all or any of the Common Area Improvement Maintenance or the other obligations under this **Section 5.3**. The fees and other amounts payable to such property manager for such services shall be included in the Cost of Maintenance.

**Section 5.4 Administrative Cooperation and/or Delegation.** The Association 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 the District or any other Person(s), to share facilities and Improvements, to share the costs and/or responsibility for any operation, administration, maintenance, repair, or replacement of Common Area Improvements or other matters undertaken by the Association, to provide covenant enforcement, to operate, maintain, repair, and replace real property, Common Area Improvements, and Improvements thereon, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association or the District, or to otherwise cooperate with any other such entities or Persons in order to increase

consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Association Board in its discretion from time to time. The costs and expenses for all such matters shall be shared or apportioned between the Association and/or the District or any other such entity upon mutual agreement of the parties, as the Association Board may agree in its discretion from time to time, and any costs therefor incurred by the Association may be levied as assessments pursuant to this Declaration. Additionally, the Association has the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with the District or any other such entities to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 5.5 **Owner's Obligation for Cost of Maintenance.**

5.5.01 Each Owner shall pay to the Administrator its Proportionate Share of the Cost of Maintenance. Such obligation shall commence with the date of the issuance of a certificate of occupancy (for the core and shell of Improvements on a Parcel) by the City. Except as set forth above, the Declarant shall be considered an Owner for the purposes of this **Section 5.4** only to the extent that it owns any part of the Property which is made subject to this Declaration other than the Common Area Improvements.

5.5.02 Each Owner's share of the Cost of Maintenance shall be assessed to it by Administrator no more frequently than quarterly and shall be accompanied by an itemized statement of such costs and the manner in which such Owner's share was determined. The determination of each Owner's share shall be as set forth in **Section 5.4.01**. Each Owner shall pay the amount shown on the statement within ten (10) business days after receipt thereof. The provisions of **Section 7.2**, **Section 7.4** and **Section 7.5** shall be applicable to the aforesaid charges.

Section 5.6 **Assignment of Declarant's Rights and Obligations to Association.** The Declarant shall, until the Turnover Date, be the "Administrator" hereunder and shall have the absolute right to exercise the powers of the Administrator hereunder, unless and until it chooses, from time to time, to delegate and assign to the Association all or a portion of Administrator's rights and obligations under this Declaration to the Association at any time prior to the Turnover Date. However, the Declarant shall not be required to make such delegation and assignment prior to the Turnover Date (and, on the Turnover Date, such delegation and assignment shall be deemed made regardless of whether the Declarant or the Association execute any writing to affect the same).

Section 5.7 **District Assumption of Rights and Obligations.** At any time following the Turnover Date, the Association may request in writing that the District assume the rights and obligations of the Administrator, or any portion thereof, hereunder. If the District Board resolves to assume such rights and obligations, the District Board shall thereafter act as or appoint or engage a Person to serve as Administrator. "Administrator," as such term is sometimes used herein, shall mean either the Declarant or, following the Turnover Date, the Association, the District, or a Person appointed or engaged to serve as the Administrator, whichever is entitled pursuant to this Article V to exercise the powers of the Administrator hereunder.

Section 5.8 **Assignment of Declarant's Assets to Association**. The Declarant may at any time convey, transfer, or assign to the Association all or any part of its right, title and interest in the Common Area Improvements, which conveyance the Association shall accept. From and after the delegation and assignment by the Declarant as aforesaid, the Declarant shall have no further duties, liabilities, or obligations in respect to the matter(s) assigned and delegated. Prior to any such assignment and delegation, the Declarant may collaterally assign any of its rights hereunder to any Mortgagee holding a valid and subsisting Mortgage or other security interest in that portion of the Property not yet conveyed to an Owner other than the Declarant. However, the Declarant shall not delegate and assign its rights and obligations under this Declaration to the Association pursuant to this Section 5.9 until any such collateral assignment is released.

Section 5.9 **District Resolution**. Upon (a) recordation of a document assigning all or any portion of the Declarant's rights, powers and reservations to the District, and (b) the District Board's adoption of a resolution acknowledging the District's acceptance of the assignment, powers to enforce covenants pursuant to State of Colorado statute and the intention of such District to provide for uniform enforcement of the Declaration, the District shall have the right to enforce the covenants, conditions, restrictions, and easements of this Declaration, and the District shall exercise any right or privilege given to the Declarant expressly in this Declaration or in a recorded document assigning all or any portion of the Declarant's rights, powers, and reservations to the District. Upon satisfaction of subsections (a) and (b), and to the extent thereof, the Declarant shall be relieved from all liabilities, obligations, and duties hereunder after the date of such assignment.

## ARTICLE VI OWNERS ASSOCIATION

Section 6.1 **Incorporation**. The Declarant shall cause to be incorporated "Quantum 56 Owners Association, Inc." a Colorado nonprofit corporation (or such other similar name as the Declarant may choose, or which may be available at the time of incorporation), in accordance with the provisions of this **Article VI**.

Section 6.2 **Membership**. Each Owner of a Parcel shall be a member of the Association; Membership shall be appurtenant to and may not be separate from the ownership of a Parcel. The Declarant shall also be a member for so long as it owns any Parcel(s) or parts thereof (except for easements therein) which comprise a part of the Property.

### Section 6.3 **Voting Rights**.

6.3.01 An Owner shall be entitled to one (1) vote for each one one-hundredth (1/100th) of an acre or fraction thereof comprising the Parcel(s) (inclusive of easement areas, public or private) that it owns subject to assessment under this Declaration.

6.3.02 The Declarant shall be entitled to three (3) votes for each one one-hundredth (1/100th) of an acre or fraction thereof comprising the Parcel(s) (inclusive of easement areas, public or private) that it owns subject to assessment under this Declaration.

6.3.03 In no event shall more than one (1) Person cast the votes which are attendant to each Parcel.

6.3.04 An Owner's voting rights shall be terminated during any period in which it is delinquent in the payment of assessments or other charges payable hereunder.

Section 6.4 **Board of Directors.** The Association shall be managed by a Board of Directors (hereinafter called the "***Association Board***") which shall exercise the powers and duties of the Association for the benefit of the Property and the members of the Association, and shall pay all costs required to be paid by or on behalf of the Association from assessments levied as herein set forth.

Section 6.5 **Association's Common Area Improvement Maintenance Obligations.** The Association shall perform such Common Area Improvement Maintenance as shall have been delegated and assigned to it by the Declarant pursuant to **Article V** and, upon such time as the Association is deemed to be the Administrator, shall exercise the powers and rights of the Administrator hereunder.

Section 6.6 **Additional Rights of Association as Successor to Declarant.** The Association, acting by and through the Design Review Committee (described in **Section 6.8**), shall exercise the powers and rights of the Design Review Committee which have been delegated and assigned to it as provided in **Section 3.9**, and upon such time as the Declarant ceases to the Design Review Committee, the Association, acting by and through the Design Review Committee (described in **Section 6.8**), shall exercise the powers and rights of the Design Review Committee hereunder, including the rights of enforcement hereunder.

Section 6.7 **Additional Powers.** The Association, to the extent the Association Board deems same appropriate for Association purposes, shall have the power to own real and personal property and interests therein, to open bank accounts, to enforce this Declaration as herein provided, to obtain a policy or policies of insurance insuring the Association, the Association Board and its members, to contract for legal and accounting services, to borrow funds for Association purposes only, to employ the services of a property manager, to establish and maintain appropriate reserve accounts, to employ employees directly or through the property manager, to otherwise do that which it believes necessary to protect or defend the Property, the Common Area Improvements and the Association and the Association Board and members from loss or damage by suit or otherwise, and to pay the costs of the foregoing from assessments (it being agreed that the Owners shall be obligated to pay, as assessments hereunder, their Proportionate Share of such costs).

Section 6.8 **Design Review Committee.**

6.8.01 **Number of Members.** Prior to the Turnover Date, the Declarant shall serve as the sole member of the Design Review Committee. Following the Turnover Date, the Design Review Committee shall consist of not more than five (5) members (collectively, the "***Committee Members***" and, each individually, a "***Committee Member***"), one (1) of whom shall be designated as chairman. A Committee Member need not be a member of the Association or an employee or agent of a member of the Association. Committee Members shall each hold office for one (1) year until their respective successors have been duly appointed.



6.8.02 **Appointment of Committee Members.** The Declarant, during the period prior to the Turnover Date, may designate additional Committee Members. Following the Turnover Date, the Association Board or the District Board, if it has assumed the powers and rights of the Design Review Committee, shall appoint Committee Members. The term of appointment of each of the Committee Members (including the chairman) appointed by the Declarant shall terminate upon written notice from the Association Board. If the Association Board provides written notice of the termination of the Declarant's appointed Committee Members, the Association Board shall immediately thereafter sit *ex officio* as the Design Review Committee until the District Board has assumed the powers and rights of the Design Review Committee or a separate Design Review Committee is created.

6.8.03 **Powers of the Committee.** The Design Review Committee shall exercise all powers to review any Plans and Specifications submitted to it by the Declarant or an Owner, as the case may be, under the provisions of **Article 3** hereof. All actions of the Design Review Committee shall be by a majority vote of a quorum of the Committee Members. A quorum shall consist of not less than 51% of the seated Committee Members.

Section 6.9 **Director, Officer, and Design Review Committee Member Liability.**

6.9.01 The Design Review Committee, its officers (if any), and the Committee Members shall not be personally liable to the Owners, Occupants, the Declarant, the Association, or other Persons for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Design Review Committee, officers, or Committee Members shall commit, except for willful misconduct or violation of any criminal code.

6.9.02 The Association and its officers (if any) shall indemnify and hold harmless the Association Board members and its heirs and legal representatives against all contractual and other liabilities to others arising out of contracts made by or acts of the Association Board members, on behalf of the Owners or the Association or arising out of their status as Association Board members or officers, **EVEN IF SUCH LIABILITIES ARISE OUT OF THE NEGLIGENCE OF SUCH BOARD MEMBER, OFFICER OR COMMITTEE MEMBER**, but not to the extent such liabilities have been finally adjudged as provided below to have arisen out of the gross negligence, willful misconduct or a violation of any criminal code of or by such Association Board member or officer.

The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, reasonable attorneys' fees, the amount of any judgment and any amount paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Association Board member or officer may be involved by virtue of being or having been such Association Board member or officer; provided, however, that such indemnity shall not be operative with respect to any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence, willful misconduct, or a violation of any criminal code in the performance of his duties as such Association Board member or officer.

6.9.03 Notwithstanding anything to the contrary contained elsewhere herein, the liability of each of the Declarant and the Association hereunder shall be limited to its interest in the Property.

Section 6.10 **Limitation of Declarant Liability**. Notwithstanding anything herein to the contrary, in no event shall any direct or indirect shareholder, limited partner, director, officer, trustee, member, employee or agent of the Declarant be personally liable for any of the obligations or liabilities of the Declarant under this Declaration.

## ARTICLE VII ASSESSMENTS LEVIED BY THE ASSOCIATION

Section 7.1 **Purpose of Assessments**. The assessments levied hereunder shall be used for the Cost of Maintenance and otherwise for carrying out the purposes of this Declaration or for the payment of expenses and costs incurred by the Administrator and the Design Review Committee in exercising the powers conferred hereunder, including, as applicable, the payment of the costs of the Association Board, the Association, and the Design Review Committee, and the costs of enforcing this Declaration.

Section 7.2 **Creation of the Lien**. Each Owner of a Parcel, by the acceptance of its Parcel Deed, whether or not such obligation is so expressed in such deed or other conveyance, hereby covenants and agrees to pay all assessments and charges as are levied or charged pursuant to the provisions of this Declaration. All assessments and charges, whether arising pursuant to the foregoing sentence or under any other provisions of this Declaration, together with interest thereon and the costs of collection (including reasonable attorney fees), if any, as herein provided, shall be a continuing lien upon the Parcel against which each such assessment or charge is made. Each such assessment and charge as aforesaid, together with interest and costs thereon, shall, in addition, be the personal obligation of the Owner of such Parcel. The provisions of this **Section 7.2**, as well as **Section 7.4** and **Section 7.5**, to the extent not inconsistent herewith, shall apply to all assessments and charges payable by an Owner to the Administrator and the Design Review Committee, and such provisions shall be enforceable by the Administrator.

Section 7.3 **Annual and Additional Assessment**. The annual assessment payable hereunder shall be fixed by the Administrator in its reasonable discretion, giving due consideration to the costs and expenses (including but not limited to the Cost of Maintenance) for the prior periods (if applicable) and to the anticipated costs and expenses over the forthcoming twelve (12) month period. Each Owner shall pay its Proportionate Share of such costs and expenses in advance by each Owner as the Administrator shall direct, but not more often than quarterly. If the assessments payable by the Owners during a calendar year exceed the actual amount incurred for the performance of the obligations hereunder for such calendar year, at the Administrator's option, such excess shall be (i) credited to assessment(s) next due hereunder; (ii) refunded to each Owner in the ratio the assessments are made (except to an Owner(s) who failed to pay the assessment(s) giving rise to the excess); (iii) applied, for the benefit of the Property, to a reserve account for future contingencies, if such application is reasonably deemed necessary by the Administrator or (iv) all or any combination of clauses (i), (ii) and (iii) above. If the need arises, the Administrator shall have the power to levy additional assessments.

Section 7.4 **Delinquent Assessments**. Any assessments or other charges which are not paid when due shall, unless such assessment or charge is paid within five (5) days following receipt of notice from the Administrator that such payment is past-due, be delinquent. If the assessment or charge is not paid within fifteen (15) days after the due date, the assessment or charge shall bear interest from the due date at a rate equal to the lesser of (i) three percent (3%) above the then “prime rate” of interest as set forth in The Wall Street Journal and (ii) the amount permitted by applicable law. The Administrator may bring an action at law against the Owner personally obligated to pay the assessment or charge or may foreclose the lien against the Parcel or Parcels owned by such Owner and such interest, together with the costs and reasonable attorneys’ fees incurred in connection with any of such actions, shall be added to the amount of such assessments or charge. The lien provided for under **Section 7.2** shall secure the payment of the assessment or charge, interest thereon and the aforesaid costs and reasonable attorneys’ fees. No Owner may waive or otherwise avoid liability for an assessment or charge as provided for herein by nonuse or abandonment of its Parcel. A statement from the Administrator stating the amount of any unpaid assessment shall be deemed to be prima facie proof of said Owner’s assessment balance and the delinquency due for such Parcel(s).

Section 7.5 **Subordination of Lien to Mortgage**. The lien for any assessment or charge provided in this Declaration shall be subject and subordinate to the lien of any Mortgage (a “**Prior Mortgage**”) which, at the time the assessment(s) giving rise to the lien became due, was an encumbrance on the Parcel(s) in question. For the avoidance of doubt, any such lien for assessment or charge shall be subject and subordinate to any advances made under such Prior Mortgage, regardless of whether such advances are made before or after the time that the assessment became due. However, such subordination shall apply only to the assessments and charges which have become due and payable prior to the date the holder of such Mortgage or a purchaser in the foreclosure of such Mortgage became the owner of the Parcel(s) in question pursuant to a foreclosure or a deed in lieu of foreclosure of such Mortgage. Such subordination shall not relieve the Parcel from the lien of any assessments or charges thereafter becoming due.

Section 7.6 **Property Not Subject to Assessment**. Any part of the Property which may be owned by the Association shall be exempt from the assessments, charges and liens created under this Declaration.

## ARTICLE VIII HAZARDOUS MATERIALS

In the event any Owner shall, in connection with its use of any portion of the Property, use, handle, store, display, dispose of or generate Hazardous Materials (“**Hazardous Materials Activity**”), such Owner shall ensure that such Hazardous Materials Activity is conducted in accordance with all applicable laws. Without limiting the foregoing, each such Owner shall (or shall cause any applicable tenant or other Occupant or user of such Owner’s Parcel to): (i) identify to the City’s fire department any building located upon the Property where Hazardous Materials may be used, displayed, handled, generated or stored, and cause such building to be constructed with impervious floors, without drains, to ensure containment and facilitate cleanup of any spill or leakage of Hazardous Materials; (ii) prohibit any outside storage of Hazardous Materials; (iii) require that any area used for loading or unloading of Hazardous Materials be covered and equipped with a collection system to contain accidental spills; (iv) require all potential generators

of Hazardous Materials to contract with a licensed public or private hazardous waste disposal service or processing facility and to provide to the appropriate governmental authorities such forms as may be required to comply with applicable laws and environmental permits; (v) prohibit generation of hazardous effluents, unless adequate facilities approved by appropriate governmental authorities are constructed and used by Owner or its tenants or other users generating such effluents and such generation complies in all respects with applicable law; and (vi) dispose of hazardous sludge materials generated by effluent pretreatment in a manner approved by applicable governmental authorities and otherwise in compliance with applicable law.

## **ARTICLE IX MISCELLANEOUS MATTERS**

Section 9.1 **Term**. This Declaration shall run for a term of forty (40) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years unless an instrument has been recorded agreeing to amend this Declaration in whole or in part executed by a majority of the Owners.

### Section 9.2 **Amendment and Modification.**

9.2.01 Until the Turnover Date, all amendments or modifications of this Declaration shall, subject to the limitations set forth herein, only be made by the Declarant without the requirement of the Association's consent or the consent of the Owners; provided, however, that the Association shall, upon request of the Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as the Declarant shall, from time to time, request.

9.2.02 After the Turnover Date, this Declaration may be amended (i) by the consent of two-thirds (2/3) of the Owners of all Parcels, together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the By-Laws evidenced by a certificate of the secretary or an assistant secretary of the Association.

9.2.03 Amendments for correction of scrivener's errors may be made by the Declarant alone until the Turnover Date and the Association thereafter and without the need of consent of the Owners.

9.2.04 Any amendment which would affect the water management system serving all or any portion of the Property, and any construction or other work to be performed in connection with any such amendments, shall be required to be previously approved by each applicable governmental authority having jurisdiction over such matters including, as applicable, the Colorado Department of Public Health & Environment.

9.2.05 Any amendment shall become effective upon the recording of a Certificate of Amendment to this Declaration setting forth such amendment or modification amongst the Records.

### Section 9.3 **Enforcement; Notice to Mortgagees.**

9.3.01 Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, 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, and possible remedies include all of those remedies available at law or in equity. The Declarant, the Association, the District, and any aggrieved Owner shall have the right, but not the duty, to institute, maintain, and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under this Declaration, the Declarant, the Association, the District, or the aggrieved Owner, when prevailing party to such action, shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums awarded. Failure by the Declarant, the Association, the District, or any Owner to enforce any covenant, restriction, or other provision herein contained, shall in no event give rise to any liability, nor shall such non-enforcement be deemed a waiver of the right to thereafter enforce any covenant, restriction, or provision of this Declaration.

9.3.02 The covenants, conditions, restrictions, easements, uses, privileges, charges and liens of this Declaration shall run with the land and be binding upon and inure to the benefit of the Declarant, the Association, the District, and each Owner in the Property or any part thereof, and their respective heirs, successors and assigns. Except as otherwise provided herein, the enforcement of the provisions of this Declaration shall be vested solely in the Administrator or the Design Review Committee, as the case may be. A breach of any of the provisions of this Declaration shall give to the party entitled to enforce such provision the right to bring a proceeding in law or in equity against the party or parties breaching or attempting to breach this Declaration and to enjoin such party or parties from so doing, or to cause such breach to be remedied, and to recover damages resulting from such breach. A breach of this Declaration by an Owner relating to the use or maintenance of a Parcel or part thereof is hereby declared to be and constitute a nuisance and every public or private remedy allowed by law or equity for the abatement of a public or private nuisance shall be available to the enforcing party under this **Section 9.3** to remedy such breach in any legal or equitable proceedings for the enforcement of this Declaration or to restrain a breach thereof, and the party or parties against whom a judgment or a decree is entered shall pay the attorneys' fees and costs of the party or parties in whose favor a judgment or decree is entered in such amount as may be fixed by the court in such proceedings. All remedies provided under this Declaration, including those at law or in equity, shall be cumulative and not exclusive. The failure of a party having a right to enforce this Declaration to so do shall not be deemed a waiver of the right nor the waiver on behalf of any other party having such right nor a waiver to seek enforcement for a subsequent breach, nor a waiver of the right to enforce any other provision of this Declaration. No party having the right to enforce this Declaration shall be liable for failure to enforce this Declaration.

9.3.03 Notwithstanding anything herein to the contrary, any party giving a notice to another party that it is in default of any provision of this Declaration (including the failure to pay any assessments or other charges as and when due hereunder) (a "**Default Notice**") shall, as a condition to the effectiveness of such Default Notice and to any enforcement action against the defaulting party, deliver a copy of such notice to any holder of a Mortgage on the Parcel and/or Improvements of the defaulting party so notified, provided such defaulting party shall have delivered to the Administrator a notice informing it of the existence of such Mortgage and the name of the person or officer and the address to which copies of the notices of defaults are to be sent. Such Mortgagee shall have a period of thirty (30) days (in addition to any cure period afforded the defaulting party)

to cure any default that is capable of being cured with the payment of money, and an additional ninety (90) days for all other defaults (and such additional time, as to non-monetary defaults, as the Mortgagee may reasonable require to cure such default, provided that such Mortgagee in good faith and with reasonable diligence either attempts to cure such default or commences and thereafter prosecutes with reasonable diligence, if not enjoined or stayed, appropriate proceedings for foreclosure or other enforcement of the liens securing its financing). Initiation of foreclosure proceedings by such Mortgagee against such defaulting party shall constitute "diligence" by such Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued. The foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not delay the exercise of self-help remedies by in the event of an emergency.

Section 9.4 **Responsibility of Owner**. Each Owner shall be responsible for any breach of this Declaration which is a result of its own acts or omissions or the acts or omissions of an Occupant of its Parcel(s) or their respective, agents or employees.

Section 9.5 **Compliance with Law**. Each Owner shall at all times comply with all applicable federal, state, county and municipal laws, ordinances, rules, and regulations having jurisdiction with respect to the construction, maintenance, operation and use of such Owner's Parcel or Improvements thereon.

Section 9.6 **Estoppel Certificate**. Upon the written request of an Owner or the holder of a Mortgage encumbering any Parcel, the Administrator shall issue a certificate within ten (10) business days setting forth the amount, if any, of any delinquent assessment or charge with respect to said Parcel and representing as to such other matters related to this Declaration as may be reasonably requested by Owner or such Mortgagee.

Section 9.7 **Determination of Acreage**. Whenever in this Declaration, an Owner's payment obligations, or voting rights, or other rights and obligations, are determined by reference to the number of acres owned by such Owner, the acreage of such Owner's Parcel or Parcels shall be used undiminished by acreage within such Parcel or Parcels that may be devoted to, or used as, a Common Area Improvement, or is otherwise subject to the easements or the easement rights of any other party, public or private. Whenever in this Declaration a determination of the number of acres is required, same shall be made to the next largest full one one-hundredth (1/100th) of an acre.

Section 9.8 **Severability**. If any of the covenants, conditions or terms of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding, provided that in such event the Administrator and all of the Owners of the Property at such time shall, to the fullest extent possible, modify such covenant, condition or term to the extent required to carry out the general intention of this Declaration and to impart validity to such covenant, condition or term.

Section 9.9 **Owner's Liability on Sale: Successor's Obligation**. Upon the sale of a Parcel, the Owner so selling shall have no further liability for the obligations with respect to such Parcel which accrue after the date of the recording of the document of conveyance; provided,

however, that nothing herein contained shall be construed so as to relieve the Parcel of any lien arising by reason of such liability or the Owner of such Parcel from any liabilities or obligations incurred under this Declaration prior to such recording.

Section 9.10 **Delay in Performance**. If the performance of any act or obligation under this Declaration is prevented or delayed by an act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, strike, lock-out, action of labor union, condemnation, threatened condemnation, requisitions, laws, orders of government or civil or military authorities or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of the Person required to perform such act or obligation, then such Person shall be excused from the performance of such act or obligation for so long as such Person is so prevented or delayed by reason thereof. This force majeure provision shall apply to the Association's, the District's, the Design Review Committee's, the Declarant's, and each Owner's obligations hereunder, except those that solely require the payment of money.

Section 9.11 **Notice**. Any notice required or desired to be given under this Declaration shall be in writing and shall be deemed to have been properly served when (i) delivered in person and receipted for, or (ii) delivered by recognized overnight courier (such as Federal Express) addressed, if to an Owner, at its last known address as shown on the records of the Administrator at the time of such mailing; if to the Association, to its President, Secretary or registered agent; or, if to the Declarant, addressed as follows: c/o Hines Interests Limited Partnership Attn: Courtney Schneider 1144 15th Street, Suite 2600, Denver, CO 80202, or to such other address as the Declarant shall from time to time designate by written notice to each Owner.

Section 9.12 **Binding Effect**. Each grantee of the Declarant, by acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any Person having at any time any interest or estate in the Property or any part thereof and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed or instrument of conveyance.

Section 9.13 **Captions - Singular, Plural, Gender**. The Article and Section headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.

Section 9.14 **Time of the Essence**. Time is of the essence in respect to the provisions of this Declaration.

Section 9.15 **Governmental Immunity**. Notwithstanding any provision to the contrary in this Declaration, no term or condition of this Declaration shall be construed or interpreted as a

waiver, either express or implied, of any of the immunities, rights, benefits, or protection provided to the District under the Colorado Governmental Immunity Act.

## ARTICLE X DISPUTE RESOLUTION

Section 10.1 **Disputes between Owners or the Association**. Matters of dispute or disagreement between Owners, the Association, or Occupants with respect to interpretation or application of the provisions of this Declaration shall be determined by the Declarant. Subject to the limitations described in **Section 9.15** herein as to the Association, this determination (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, the Association, and Occupants. The District shall not be subject to the provisions of this **Article X**, nor shall any Mortgagee, unless it expressly elects to do so.

### Section 10.2 **Dispute Resolution**.

10.2.01 **Right to Correct**. Prior to any Owner or the Association commencing any proceeding to which the Declarant is a party, including but not limited to an alleged defect of any improvement, the Declarant shall have the right to be heard by the Owners, or the particular Owner, or the Association and to access, inspect, correct the condition of or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

10.2.02 **Alternative Method for Resolving Disputes**. The Declarant, its officers, directors, employees, and agents; all Persons subject to this Declaration; any contractor, its officers, directors, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this **Section 10.02** (each such entity being referred to as a “**Bound Party**”) agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in **Section 10.02.03** (collectively, the “**Claims**”) to the mandatory procedures set forth in **Section 10.02.04**.

10.2.03 **Claims**. Unless specifically exempted below, and subject to the provisions of **Section 9.15** herein, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (i) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents; (ii) relating to the design or construction of improvements; or (iii) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of this Section 9.02. Notwithstanding the above, Unless all parties thereto otherwise agree, the following shall be considered Claims and shall be subject to the provisions of this **Section 10.02**:

- (a) any suit by the Declarant against any Bound Party to enforce any of the provisions of this Declaration;
- (b) any suit by the Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the



court may deem necessary in order to maintain the status quo and preserve the Declarant's ability to act under and enforce the provisions of this Declaration;

(c) any suit between or among Owners or the Association which does not include the Declarant or any contractor as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

### Section 10.3 **Mandatory Procedures.**

10.3.01 **Notice.** Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") (the Claimant and Respondent referred to herein being individually, as a "**Party**," or, collectively, as the "**Parties**") shall notify each Respondent in writing (the "**Notice**"), stating plainly and concisely:

(a) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(b) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) The proposed remedy; and

(d) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

### 10.3.02 **Negotiation and Mediation.**

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Parties may agree to appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have two (2) days to submit the Claim to mediation under the auspices of the American Arbitration Association ("**AAA**") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties, If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings (“**Termination of Mediation**”). The Termination of Mediation Notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(i) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate Arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys' fees and court costs.

(e) **Binding Arbitration.**

(i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding Arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the Arbitrator may be entered in and enforced by any court having jurisdiction over such Claim.

(ii) Each Party shall bear its own costs and expenses and an equal share of the Arbitrator's and administrative fees of Arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of Arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitration of any Claim shall be decided by the Arbitrator(s).

(iii) The award of the Arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an Arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

## ARTICLE XI EASEMENTS

Section 11.1 **Vehicular and Pedestrian Access Easement.** Declarant creates, dedicates, grants and establishes, for the benefit of each of the Owners or Occupants, appurtenant to each Parcel, a perpetual non-exclusive and reciprocal easement for pedestrian and vehicular cross access, ingress and egress upon, over and across paved driveways, roadways, truck pads, and walkways as presently or hereafter constructed by Declarant or the District in the Property which connect or service more than one Parcel (collectively, the “**Access Areas**”) for the purpose of providing access, ingress and egress for motor vehicles, and pedestrians between all portions of the Property and to and from all abutting streets or rights-of-way furnishing access to the Property. The scope of the aforesaid access easements does not include reciprocal parking rights. The Access Areas include, but are not limited to, all of Tract C.

Section 11.2 **Maintenance and Utility Access Easement.** Each Owner hereby grants to the Association, and to its agents, employees and contractors, a right and easement on, over, under, across and through such Owner’s Parcel, for access to, and maintenance, repair and replacement of Improvements as permitted or required in this Declaration; to utility providers, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of utility meters, lines and appurtenances; and to the Association, for and incidental to inspection and/or enforcement, incidental to any term or provision of the Declaration. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on Common Area Improvement, any Improvement, any other property, or any Parcel, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt restoration and repair. 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 Parcel; except that no such notice shall be required in connection with any exterior, non-intrusive entry; and except that in emergency situations entry upon a Parcel may be made at any time, provided that the Owner(s) or occupant(s) of each affected Parcel shall be notified of emergency entry as early as is reasonably possible. The interior of any Improvement shall not be subject to the easements provided for in this Section.

Section 11.3 **District Easement.** There is hereby granted a non-exclusive general easement to the District for ingress, egress and access over, across, through and under all of, or so much of, the Property as may be reasonably necessary for the District to exercise its rights and to perform its obligations as set forth in the Declaration.

Section 11.4 **Utility Easement.** Subject to the terms and conditions of this Declaration, Declarant hereby reserves for itself, the District, and the Association and creates for the benefit of each Owner any utility or service company designated by Declarant or an Owner a general easement over, across, through and under the Common Area Improvements for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including water, sewer, storm water drains and pipes, snow melt, telephone, electricity, fiber optic, high-speed internet access, data transmission, cable communication and any similar public or quasi-public improvements or facilities that service the Property or any portion thereof as well as any such lines and systems that service real property owned by Declarant, the District, or the Association or other buildings or real property designated by Declarant. Declarant may, but

is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 11.4 upon the request of any Owner showing good cause therefor.

Section 11.5 **Emergency Access Easement**. Declarant hereby grants to, and creates for the benefit of, all police, sheriff, fire protection, ambulance and all other similar emergency agencies or a non-exclusive easement for ingress and egress purposes to use the access easements depicted on Quantum 56 Filing No. 1 – Final Plat recorded April 5, 2022, at Reception No. 2022000030160, County of Adams, State of Colorado to enter upon the Property in the proper performance of their duties.

## ARTICLE XII MORTGAGEE PROTECTIONS

Section 12.1 **Benefit of First Mortgagees**. This Article establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 12.2 **Notice of Actions**. If requested in writing to do so, the Administrator shall give prompt written notice of the following to each First Mortgagee making such request:

12.2.01 any condemnation loss or any casualty loss which affects a material portion of the Common Area Improvements or a Parcel encumbered by a Mortgage held by a First Mortgagee;

12.2.02 any delinquency in the payment of Assessments which remains uncured for 60 days by an Owner whose Parcel is encumbered by a First Mortgage held by such First Mortgagee;

12.2.03 any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

12.2.04 any proposed action which would require the consent of First Mortgagees as set forth in this Article; and

12.2.05 any judgment rendered against the Association or the Declarant with respect to the Property or this Declaration or its obligations hereunder.

Section 12.3 **Consent Required**.

12.3.01 Notwithstanding anything to the contrary contained in this Declaration, the Administrator may not take any of the following actions without the consent of two-thirds (2/3) of the First Mortgagees (based on the Proportionate Share of each Owner's Parcel covered by a First Mortgage):

(a) by act or omission seek to abandon or terminate the Association, except to the extent provided by applicable law after condemnation or substantial casualty;

(b) subdivide, partition, or relocate the boundaries of any Parcel, except as permitted with respect to Declarant Rights;

(c) abandon, subdivide, partition, encumber, sell, or transfer the Common Area Improvements;

(i) the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers; and

(ii) the transfer of ownership of Common Area Improvements or any portion of the Property to the District shall not be deemed a transfer for purposes of this **Section 12.3**; or

(d) use hazard insurance proceeds for losses to any portion of the Common Area Improvements for other than repair, replacement, or reconstruction of such Common Area Improvement.

12.3.02 Notwithstanding anything to the contrary contained in this Declaration, no amendment, modification or termination of any of the rights and provisions of this Declaration shall adversely affect the rights of any Mortgagee unless the Mortgagee consents to it. This Declaration and may not be terminated without the consent of the First Mortgagee of the Mortgage or Mortgages encumbering the Property subject to such termination; provided however, that unless a First Mortgagee provides the Administrator with written notice of its objection, if any, to any proposed termination of this Declaration within 30 days following the receipt of notice of such proposed termination, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed termination. The required notice must be delivered by certified or registered mail with return receipt requested.

12.3.03 Notice of Objection. Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within 30 days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

#### Section 12.4 **First Mortgagee's Rights**.

12.4.01 First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area Improvements, and may pay overdue premiums on hazard insurance policies, for the Common Area Improvements. First Mortgagees making such payment shall be owed immediate reimbursement from the Association.

12.4.02 A First Mortgagee shall be entitled to cure any delinquency of the Owner of a Parcel encumbered by its First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 12.5 **Limitations on First Mortgagee's Rights**. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

12.5.01 deny or delegate control over the general administrative affairs of the Association by the Owners or the Association Board;

12.5.02 prevent the Association or the Association Board from commencing, intervening or settling any legal proceeding.

Section 12.6 **Declarant Rights**. No provision or requirement of this ARTICLE XII shall restrict or limit any rights or powers reserved to Declarant in this Declaration.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Declarant has caused this DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS FOR Grand National Business Park to be executed as of the date and year first above written.

**QUANTUM 56 PHASE I LLC**

By: Quantum 56 Logistics LLC, its sole member

By: Quantum 56 Investors LLC, its managing member

By: Hines Quantum 56 LLC, its managing member

By: Hines Quantum 56 Associates LP, its sole member

By: Hines Interests Limited Partnership, its general partner

By: 

Name: CHRIS R. CRAWFORD

Title: SENIOR MANAGING DIRECTOR

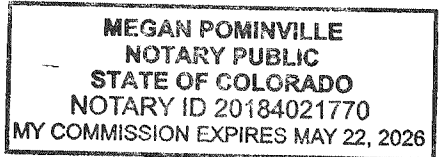
CS

*[Acknowledgments Follow]*

STATE OF COLORADO           §  
  §   SS:  
COUNTY OF DENVER           §

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by CHRIS E. CRANFORD the ~~SOLE MANAGING DIRECTOR~~ of Hines Interests Limited Partnership, a Delaware limited partnership, the general partner of Hines Quantum 56 Associates LP, a Delaware limited partnership, the sole member of Hines Quantum 56 LLC, a Delaware limited liability company, managing member of Quantum 56 Investors LLC, a Delaware limited liability company, the managing member of Quantum 56 Logistics LLC, a Delaware limited liability company, the sole member of Quantum 56 Phase I LLC, a Delaware limited liability company, and voluntarily under authority duly vested in him/her by said company and that the seal affixed thereto is the true corporate seal of said company. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 10<sup>TH</sup> day of NOVEMBER 2023.



[Signature]  
Notary Public  
MEGAN POMINVILLE  
Typed, printed or stamped name of Notary Public

My Commission Expires: MAY 22, 2026



CONSENT AND SUBORDINATION OF TRANSAMERICA LIFE INSURANCE COMPANY  
TO MASTER DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR QUANTUM 56

The undersigned, the beneficiary under that certain Construction and Permanent Deed of Trust, Security Agreement and Fixture Filing, recorded July 17, 2023, at Reception No. 2023000040313 in the records of the office of the clerk and recorder of the County of Adams, Colorado (the "Records"), and as the same may be amended or supplemented from time to time (the "Deed of Trust"), which Deed of Trust encumbers certain portions of the Property, hereby consents to this Master Declaration of Easements, Covenants, Conditions, and Restrictions for Quantum 56 (the "Declaration"), and does hereby agree that the lien of the Deed of Trust is and shall be subordinate and inferior to the easements, covenants, conditions, restrictions and other terms established by the Declaration, none of which shall be extinguished, limited or affected to any extent by any foreclosure of the Deed of Trust except to the extent set forth therein.

TRANSAMERICA LIFE INSURANCE COMPANY

By: 

Name: Sarah Swartzendruber

Title: Its Authorized Signatory

**EXHIBIT A**

**LEGAL DESCRIPTION**

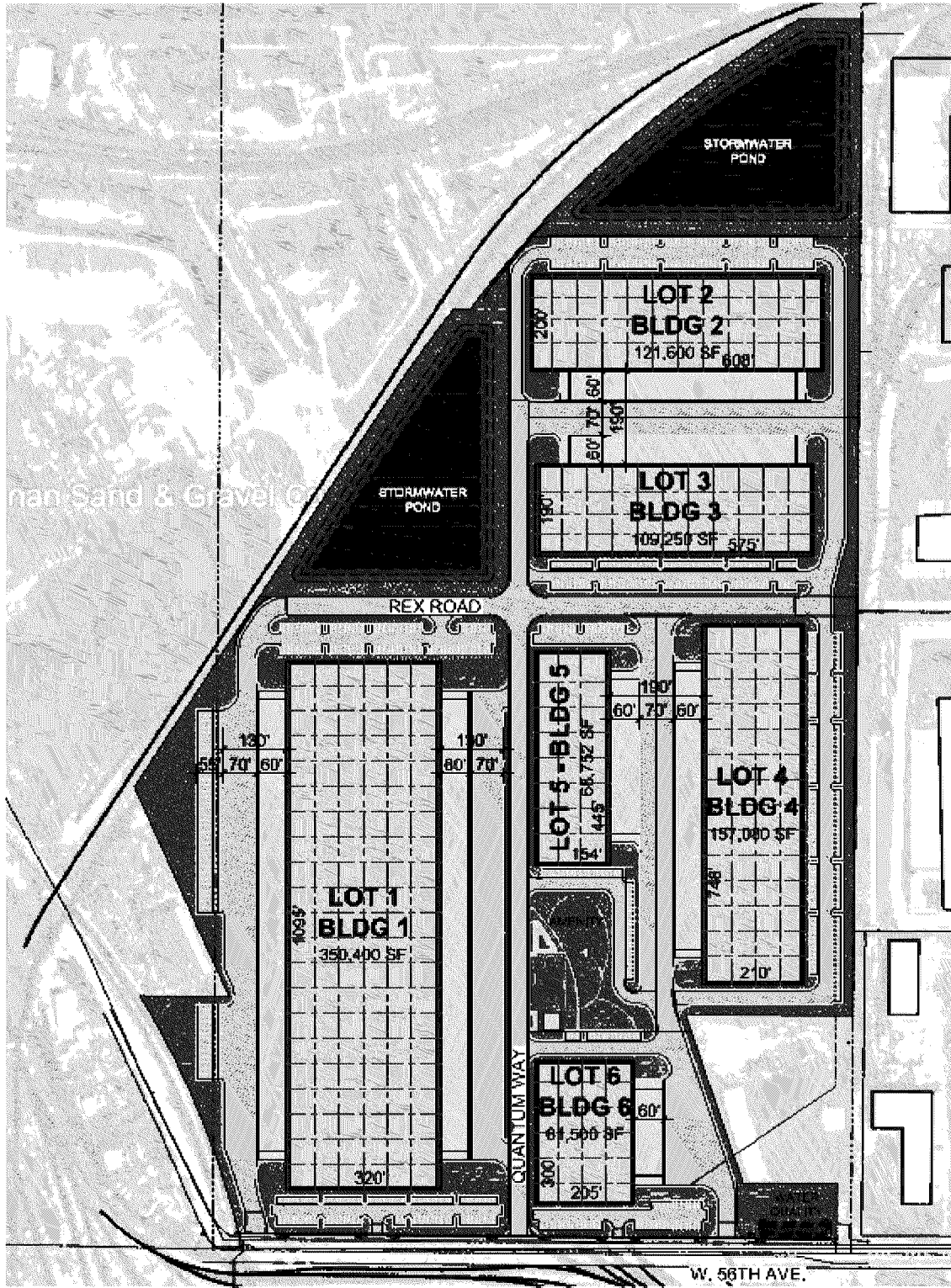
Lots 1, 2, 3, 4, 5 and 6, and Tracts A, B, C, D, E, and F, Quantum 56 Filing No. 1 – Final Plat, according to the plat thereof recorded April 5, 2022, at Reception No. 2022000030160, County of Adams, State of Colorado.

FOR INFORMATIONAL PURPOSES ASSESSOR PARCEL NUMBERS AND ADDRESSES:

<b>Lot/Tract</b>	<b>Parcel No.</b>	<b>Address</b>
Lot 1	0182510303004	601 W 56th Ave
Lot 2	0182510303002	485 W 56th Ave
Lot 3	0182510303003	455 W 56th Ave
Lot 4	0182510303006	424 W 56th Ave
Lot 5	0182510303005	537 W 56th Ave
Lot 6	0182510303007	505 W 56th Ave
Tract A	0182510303008	N/A
Tract B	0182510303009	N/A
Tract C	0182510303010	N/A
Tract D	0182510303011	525 ½ W. 56 <sup>th</sup> Ave
Tract E	0182510303012	N/A
Tract F	0182510303013	N/A

**EXHIBIT B**

**MASTER SITE PLAN**



## EXHIBIT C

### PROHIBITED USES

No portion of the Property shall be used for any of the following uses:

1. any residential or public use
2. any agricultural use (except for growing or storing crops on imported soil within structures built on the Property, provided such growing or storage does not involve the use or disturbance of the existing soil at, on or under the Property)
3. schools, public parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination
4. any mobile home park or trailer court in connection with manufactured housing (except that this provision shall not prohibit the temporary use of construction trailers or trailers otherwise expressly permitted in the Declaration)
5. any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building)
6. any fire sale, auction, going-out-of-business sale, bankruptcy sale (unless pursuant to a court order) or similar sale
7. any flea market
8. any establishment selling or exhibiting pornographic materials (materials shall be considered "pornographic" for such purpose if the same are not available for sale or rental to children under eighteen (18) years old because they explicitly deal with or depict human sexuality except as an incidental portion of a reputable bookstore such as Barnes & Noble)
9. massage parlor (except an upscale massage business operated by licensed massage therapists such as "Massage Envy" and "Massage Heights")
10. any tattoo parlor
11. any use which is a public or private nuisance