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El Paso County, CO



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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR WINDERMERE**

This Declaration of Covenants, Conditions and Restrictions for Windermere (“Declaration”) is made as of April 21, 2022 by Eagle Development Company, Lorson South Land Corp. and Babcock Land Corp., all Colorado corporations (“Declarant”).

**BACKGROUND AND PURPOSE**

Declarant is the record owner of real property legally described in **Exhibit A** attached hereto and incorporated by reference (the “Property”). The Property is within a larger development known as Windermere, located in El Paso County, Colorado.

This Declaration is executed and recorded (a) in furtherance of a common and general plan for the residential land within Windermere; (b) to protect and enhance the quality, value, desirability and attractiveness of all residential property within Windermere; (c) to provide for design review and covenant enforcement for residential property within Windermere; and (d) to define duties, powers and rights of Declarant, District No. 4, the Districts, the owners of residential property within Windermere, and owners associations that may be created within Windermere after this Declaration is recorded. Because this Declaration does not create a “common interest community” as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-101, *et seq.*, Colorado Revised Statutes, this Declaration is not governed by that Act.

The Sands Metropolitan District No. 4 (“District No. 4 (referred to herein as the “District”)), has been formed as a special district in accordance with the Special District Act, Section 32-1-101, *et seq.*, Colorado Revised Statutes. District No. 4 is authorized under the Act to enforce covenants and provide design review services pursuant to Section 32-1-1004 (8), Colorado Revised Statutes. The overall authority and powers of District No. 4 are set forth in the Consolidated Service Plan for The Sands Metropolitan District No. 4 approved by the El Paso County Board of Commissioners on \_\_\_\_\_, by Resolution number \_\_\_\_\_, recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the records of El Paso County.

It is the intention of Declarant, in imposing this Declaration on the Property, to empower District No. 4, through its Board of Directors, to provide design review and covenant enforcement services for the Property until such time as District No. 4 delegates such authority.

**DECLARATION**

NOW, THEREFORE, Declarant, for itself, its successors and assigns, hereby declares that the Property is and shall henceforth be owned and conveyed subject to the following uniform covenants, conditions and restrictions in furtherance of a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property, and to enhance the value, desirability and attractiveness of Windermere. This Declaration is intended to and shall run with the land and shall be binding on all persons having or acquiring any interest in

the Property or any part thereof; shall inure to the benefit of and be binding upon every part of the Property and every interest therein; and shall inure to the benefit of, be binding upon and be enforceable by Declarant, the Districts, their successors in interest, owners associations within Windermere that have been delegated such enforcement authority, and each Owner and such Owner's successors in interest.

## ARTICLE 1 DEFINITIONS

The following words and phrases when used herein shall have the meanings hereinafter specified.

1.01 Builder shall mean any Person purchasing a Lot for the purpose of constructing a Home to be sold to an Owner or leased to a third party, or any Person hired by an Owner to construct a Home on the Owner's Lot.

1.02 Declarant shall mean Eagle Development Company, Lorson South Land Corp. and Babcock Land Corp., all Colorado corporations, and any Person to which Declarant specifically assigns all or a portion of its rights or obligations as Declarant under this Declaration by written document recorded in the records of El Paso County, Colorado; and its successors and assigns. A successor to Declarant by consolidation or merger shall automatically be deemed a successor or assign of Eagle Development Company, Lorson South Land Corp. and Babcock Land Corp., all Colorado corporations as Declarant under this Declaration.

1.03 Declaration shall mean this document as it may be amended from time to time.

1.04 Design Guidelines shall mean the architectural, construction, structural and/or aesthetic criteria, rules or standards, if any, established by the Design Review Committee from time to time that will apply to Improvements within all or specified portions of the Property.

1.05 Design Review Committee shall mean the committee created pursuant to Article 3.

1.06 District shall mean The Sands Metropolitan District No. 4 (or collectively, the "Districts") and any Person to which a District specifically assigns all or a portion of its rights or obligations under this Declaration by written agreement; and its successors and assigns. A successor to a District by consolidation or merger shall automatically be deemed a successor or assign of that District under this Declaration.

1.07 District Board shall mean the board of directors of a District.

1.08 District No. 4 shall mean The Sands Metropolitan District No. 4 and any Person to which The Sands Metropolitan District No. 4 specifically assigns all or a portion of its rights or obligations under this Declaration by written agreement; and its successors and assigns. A successor to The Sands Metropolitan District No. 4 by consolidation or merger shall

automatically be deemed a successor or assign of The Sands Metropolitan District No. 4 under this Declaration.

1.09 District No. 4 Board shall mean the board of directors of District No. 4.

1.10 District Properties shall mean all real and personal property, together with any Improvements and appurtenances and rights thereto, now or hereafter owned, leased or maintained by a District. District Properties may include, without limitation, parks and open space within the Property, public trails, landscaping and related structures along public rights of way, entry signage and features, public walkways and trails.

1.11 Home shall mean an Improvement on a Lot that is intended or used for residential occupancy, and shall include a townhome and similar higher density projects.

1.12 Improvement shall mean anything which alters the previously existing exterior appearance of any land, including but not limited to Homes, buildings, outbuildings, patios, swimming pools, garages, doghouses, pet enclosures, mailboxes, aerials, antennas, roads, driveways, sidewalks/walks, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), or other utilities.

1.13 Lot shall mean a parcel of land designated as a lot in a recorded Plat within the Property, together with all appurtenances and Improvements associated therewith, now existing or subsequently created.

1.14 Notice and Hearing shall have the meaning set forth in Section 4.02 of this Declaration.

1.15 Owner shall mean the record titleholder, whether one or more Persons, including Declarant or a Builder, of fee simple title to a Lot.

1.16 Person shall mean a natural individual, trust or legal entity.

1.17 Plat shall mean a governmentally approved and recorded map of land that is part of the Property. All such Plats are incorporated herein by reference and made a part hereof as though attached as an Exhibit.

1.18 Property shall initially mean the real property described on **Exhibit A** attached hereto and all real property that is made subject to this Declaration in the future pursuant to a document recorded in the records of El Paso County, Colorado; provided, however, that it shall not include any property that has been withdrawn by Declarant in accordance with this Declaration.

1.19 Rules and Regulations shall mean those rules and regulations, if any, adopted as provided in Section 4.01 of this Declaration, as the same may be amended from time to time.

ARTICLE 2  
COVENANTS TO PRESERVE THE CHARACTER OF THE COMMUNITY

These covenants are adopted in order to preserve the desirability, attractiveness and value of residential property in Windermere. The following restrictions and conditions shall apply to all land that is now or may hereafter be subject to this Declaration.

2.01 General. All Homes, buildings and structures of any kind shall be constructed, installed, maintained and used in compliance with El Paso County standards, ordinances, rules and regulations after obtaining all required permits and licenses, and in accordance with any Design Guidelines, as those may be amended from time to time.

2.02 Improvements. All Improvements placed on a Lot shall be subject to prior approval in writing by the Declarant or Design Review Committee or as provided in the Design Guidelines.

2.03 Construction.

- (a) Construction Type. All construction shall be new. Any building previously used at another location or any building or Improvement originally constructed as a mobile dwelling may not be moved onto a Lot except as expressly provided in Section 2.03 (h) for temporary construction, sales or administration buildings or as approved by the Declarant or Design Review Committee.
- (b) Storage. Building materials may not be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, unless such building materials are stored in an enclosed area and fully screened; except that Builders, with the prior written approval of, Declarant, the Design Review Committee or District No. 4, may store building materials, supplies and equipment on their own land in the Property.
- (c) Construction Rules and Regulations. During the period of construction of a Home, building or other Improvement on a Lot, the Owner of the Lot or the Builder shall comply with all construction rules and regulations which the Declarant, the District No. 4 Board or the Design Review Committee may establish from time to time provided that such rules and regulations will not unreasonably interfere with construction by any Builder.
- (d) Construction Completion. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed. The exterior of all Homes, buildings or Improvements must be completed within twelve (12) months after the commencement of construction, or such other time as the, District, Declarant or Design Review Committee deems reasonable under the circumstances due to the nature of the project or other factors. "Commencement of Construction" for a Home

or building is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within the above time periods or such later time as approved by the Declarant, District or Design Review Committee, the Design Review Committee may take further action as provided for in this Declaration.

- (e) Occupancy. Any Home or building constructed on a Lot shall not be occupied in the course of original construction until the applicable building authority authorizes such occupancy.
- (f) Landscaping. Within twelve (12) months after occupancy of a Home on a Lot or such longer period of time approved by the Design Review Committee or as established in the Design Guidelines, all Landscaping shown on a landscaping plan approved by the Declarant, District or Design Review Committee must be properly installed by the Builder. All portions of the Lot, which includes front, back, and sides will be landscaped and maintained in accordance with the Design Guidelines or as otherwise approved by Declarant, and initially installed by the Builder.
- (g) Fences or Walls. Fences or walls are subject to approval by the Design Review Committee or Declarant. Within six (6) months after occupancy of a Home on a Lot or such longer period of time approved by the Declarant, District, or Design Review Committee or as established in the Design Guidelines, all Fencing must be properly installed by the Builder. All portions of the Lot, which includes front, back, and sides will be fenced and maintained in accordance with the Design Guidelines, and initially installed by the Builder.
- (h) Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained by a Builder with the permission of Declarant. Model homes may be used and exhibited by a Builder with the permission of Declarant. Temporary buildings shall be promptly removed when they cease to be used for construction or sales purposes.
- (i) Utilities. All utilities serving a Lot will be placed underground. Declarant or District No. 4 reserves the right to locate main transmission lines above ground if determined to be advisable. Declarant may grant approval for temporary above ground utility service during construction.

2.04 Grading Patterns. Material changes shall not be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading without the prior approval of the Design Review Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and to protect foundations and footings from excess moisture.

2.05 Building and Grounds Maintenance. The exterior of all Improvements and grounds of a Lot must be maintained by the Owner in a state of good condition and repair. Such obligation includes, but is not limited to, maintaining the exterior materials and finishes of the Improvements, fencing, landscaping, drainage areas, driveways and sidewalks. Irrigation of landscaping will be in compliance with any applicable watering ordinance. If an Owner fails to maintain the Improvements, the District No. 4 Board may give written notice to the Owner that, unless the required maintenance is diligently pursued within the ten (10) days following such notice, the property will be declared a nuisance and the District No. 4 Board shall have the right to take enforcement action pursuant to this Declaration.

2.06 Rebuilding or Restoration. If any Improvement is destroyed in whole or in part, it must be rebuilt or all debris must be removed promptly and the Lot restored to a safe and attractive condition. Such rebuilding or restoration must be commenced within thirty (30) days after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed ten (10) months after the date the damage occurred or such longer period of time as may be approved by the Design Review Committee. If restoration or rebuilding is not completed within the above time periods or such later time approved by the Design Review Committee, or if the restoration or rebuilding shall cease for a period of twenty (20) days without permission of the Design Review Committee, the Design Review Committee may give written notice to the Owner that unless the restoration is diligently pursued within the ten (10) days following notice, the Improvement will be declared a nuisance and the Declarant or the District No. 4 Board shall have the right to take enforcement action pursuant to this Declaration.

2.07 Outside Storage. Equipment, tools and other items must be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets.

2.08 Patio Covers, Swingsets and Other Similar Structures. These structures or other similar facilities may only be installed on a Lot in accordance with the Design Guidelines or as approved by the Design Review Committee.

2.09 Refuse. Unsightly objects or materials, including but not limited to ashes, trash, garbage, grass or shrub clippings, scrap material or other refuse, or containers for such items, must not be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during hours of refuse collection.

2.10 Nuisances. Noxious, hazardous or offensive activity must not be carried in or upon any Lot, Home or Improvement, nor may anything be done on a Lot tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood.

2.11 Lights, sounds and odors. Lights that are unreasonably bright or cause unreasonable glare, and sounds or odors that are noxious or offensive to others are not permitted to emanate from any Lot.

2.12 Noxious Weeds and Insects. All portions of a Lot must be kept free from noxious weeds and insects.

2.13 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot. An aggregate number of not more than three dogs or cats may be kept on a Lot (which must be restrained or fenced at all times). Domesticated birds or fish and other small domestic animals permanently confined indoors will be allowed in reasonable number, as determined by the District No. 4 Board. No animal of any kind shall be permitted which, in the opinion of the District No. 4 Board, makes an unreasonable amount of noise or odor or is otherwise a nuisance. No animals may be kept, bred or maintained on a Lot for any commercial purpose. The Owner of a Lot upon which an animal is kept is responsible for payment of any and all damage caused to the property of others, including District Properties. Owners are responsible for cleaning up after their pets on any portion of the Property.

2.14 Vehicles.

(a) Parking. A boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes, any towed trailer unit, motorcycle, all terrain vehicle, recreational vehicle or non-pickup truck shall not be parked on any street or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Design Review Committee. An exception to this restriction will be made for an emergency motor vehicle used by an Owner who is a bona fide member of a volunteer fire department or is an employee of an emergency firefighting, ambulance service, law enforcement or emergency medical services provider, provided that the vehicle: i) has a gross weight rating of 10,000 pounds or less; ii) bears an official emblem of the emergency services provider; and iii) does not obstruct emergency access or interfere with the reasonable needs of other Owners. Passenger vehicles owned, leased, rented or used by Owners or any other Person used as primary transportation on a day-to-day basis shall not be parked on any street within the Property for longer than seventy-two (72) hours without being moved. It is the intent of this Declaration that all vehicles park in garages and driveways; no extended street parking is permitted.

(b) Vehicle Repairs. The maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine, apparatus, trailer, equipment or device may not be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets and from neighboring property.

(c) Abandoned or Inoperable Vehicles and Equipment. Any type of stripped down, partially wrecked or abandoned or other similar vehicle (boat, machine, apparatus, trailer, equipment or device, or any sizeable part thereof) which has not been driven under its own propulsion for a period of two weeks, shall not be permitted to be placed anywhere within the Property except within a completely enclosed Improvement.

2.15 Signs. One (1) temporary sign advertising the real property for sale or rent, or for a garage sale, which is no more than six square feet in size, the style of which is compatible

with the appearance of Windermere, may be installed on a Lot. Trade signs identifying a contractor performing work such as landscaping, painting, remodeling, etc., may only be displayed while such work is in progress on a Lot and must be removed upon completion of the work. Political signs for an upcoming election may be displayed on a Lot no earlier than 60 days before an election and must be taken down within 15 days after an election. No Owner or Person may post signs upon any portion of the District Properties or Public Right-of-ways.

2.16 Hazardous Activities. No activities shall be conducted on any Lot or within an Improvement which are unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in common household products and in such limited quantities so as to not constitute a hazard or danger to person or property. An Owner must not permit any condition on a Lot that creates a fire hazard or is in violation of fire prevention regulations adopted by the governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by a governmental authority, such ban shall be observed within the Property

2.17 Temporary Buildings. A temporary house, trailer, tent, garage or other outbuilding will not be placed or erected on a Lot or used as a residence. The Design Review Committee may grant permission to an Owner for the placement of a temporary structure for storage of materials during construction on a Lot.

2.18 Professional or Home Occupation. Except as may be required of Declarant or a Builder in pursuit of construction activities within the Property, Lots shall be used for residential use only including uses which are customarily incident to such residential use, and shall not be used at any time for business, commercial or professional purposes. However, an Owner may conduct business activities within a Home provided that all of the following conditions are met:

- (a) the business conducted is clearly secondary to the residential use of the Home and is conducted entirely within the Home;
- (b) the existence or operation of the business is not detectable from outside of the Home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;
- (c) the business does not result in an undue volume of traffic or parking within the Property;
- (d) the business conforms to all applicable zoning requirements and is lawful in nature; and
- (e) the business conforms to any Rules and Regulations that may be adopted by the District No. 4 Board from time to time.



2.19 Subdivision of Lots. No Lot may be subdivided or further divided by an Owner other than Declarant.

2.20 Satellite Dishes and Antennas. Except as provided below in this Section, no aerial, antenna or other device for reception of radio, television, microwave device or other electronic signals may be maintained on the roof of any Improvement, nor shall such structure be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for structures, other than FCC Structures (defined below) must be approved by the Design Review Committee prior to installation. An FCC Structure is defined by the Federal Communications Commission as: (a) an antenna that is one meter (39.37") or less in diameter and is designed to: (i) receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite; (ii) receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite; and (b) an antenna that is used to receive television broadcast signals. An FCC structure may be installed on a Lot without prior Design Review Committee approval, subject to the following conditions:

- (a) To the extent feasible, the satellite dish/antenna should be placed in the rear or side yard in such a manner that it is screened from adjacent street(s) and neighboring properties. Rooftop mounting that is visible from adjacent street(s) is discouraged.
- (b) The satellite dish/antenna should be installed at the lowest possible placement, utilizing ground level siting (unless a signal is not attainable).
- (c) The satellite dish/antenna should be painted to match the surrounding environment or screened with a reasonable amount of plantings to minimize its visual impact to surrounding areas.

2.21 Utilities Location. When installing Improvements on a Lot, Owners are responsible for locating all water, sewer, gas, electrical, cable television or other utility lines and easements. Owners must not construct any Improvements over utilities easements without the consent of the utility involved and Owners will be responsible for any damage to utility lines caused by their work. Owners should request the location of underground utility lines and easements through a utility line location center.

### ARTICLE 3 DESIGN REVIEW AND APPROVAL

3.01 Design Review Committee. The Design Review Committee shall consist of at least one and not more than five individuals, all of whom shall be appointed by the District No. 4 Board. In lieu of appointing a separate Design Review Committee, the District No. 4 Board may act as the Design Review Committee. The Design Review Committee shall exercise the functions assigned to it by the District No. 4 Board, this Declaration and the Design Guidelines.

3.02 Composition of the Design Review Committee. If the District No. 4 Board does not serve as the Design Review Committee, then individuals appointed to serve on the Design

Review Committee shall serve for a two-year term and may be removed by a majority vote of the District No. 4 Board. If a vacancy on the Design Review Committee occurs for any reason, a majority of the District No. 4 Board may appoint a replacement to complete the unexpired term. Design Review Committee members need not be Owners.

3.03 Design Guidelines. The Design Review Committee may from time to time adopt Design Guidelines applicable to Improvements within the Property. Such Design Guidelines may regulate, without limitation, the following matters: a) site location; b) architectural design; c) site accessories, (e.g., lights, signs); d) landscape design; e) building size and height; and f) approval processes. The Design Review Committee shall have the right to modify or supplement the Design Guidelines from time to time upon the written approval of the District No. 4 Board. The Design Guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Design Guidelines and the provisions of this Declaration, the Declaration shall control.

3.04 Approval Required. An Improvement shall not be placed, erected, installed or permitted to exist on any Lot, the exterior of any existing Improvements shall not be altered, and construction shall not be commenced on any Improvements, unless and until the plans for such Improvement have been submitted to and approved in writing by the Design Review Committee. Improvements installed or constructed prior to Design Review Committee written approval, or not installed or constructed in compliance with the approved Plans, shall be deemed to be in non-compliance and may be subject to enforcement action under this Declaration.

3.05 Exclusive Approval by District Board. The District No. 4 Board shall have the exclusive right to review, approve and enforce construction of all Improvements on a Lot prior to the completion of the first Home on a Lot in accordance with this Declaration and Design Guidelines. After the first Home on a Lot has been completed, the Design Review Committee shall have the right to review, approve and enforce construction of Improvements on a Lot in accordance with this Declaration and Design Guidelines.

3.06 Exemption of Builders and Declarant. Declarant shall be exempt from the provisions of this Article. This exemption shall terminate two years after such time as Declarant no longer owns any real property within the Property. Notwithstanding anything to the contrary contained in this Declaration, as long as a Builder has received design review approval from Declarant, such Builder shall be exempt from the provisions of this Article.

3.07 Submittal of Plans. The requirements for submittal of plans to the Design Review Committee will be set forth in the Design Guidelines.

3.08 Approval Process. All action required or permitted to be taken by the Design Review Committee must be stated in writing, and any such written statement must establish the action of the Design Review Committee. The Design Review Committee will approve or disapprove Plans within forty-five (45) days following submission of a complete set of Plans. If the Design Review Committee does not act within forty-five (45) days following submission, the plans shall be deemed disapproved. The Design Review Committee may charge reasonable fees to cover expenses incurred in the review of plans. The Design Review Committee will retain, for such time as provided in its records retention policy, one copy of all approved plans

as part of its records and written records of all actions taken by it that will be available to Owners for inspection at reasonable business hours. Plan approval will automatically expire one year after approval if construction is not commenced within such one-year period, and if approval so expires, the applicant must submit a new request for approval.

3.09 Approval Standards. In granting or withholding approval of matters submitted to it, the Design Review Committee shall consider the specific standards and specifications set forth in any Design Guidelines then in effect and any other matter, whether objective or subjective, that the Design Review Committee feels is relevant to the issue presented. The Design Review Committee shall have the right to disapprove any plans or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with the Design Guidelines or any provision of this Declaration; if the plans submitted are incomplete; or if the Design Review Committee deems the plans or details, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the Windermere, District No. 4, the Districts or the Owners. If the Design Review Committee believes there may be questions of structural integrity, it may, as part of the review process, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. A majority of the Design Review Committee members attending a meeting at which plans are approved shall constitute a quorum, and a majority vote of the quorum of the Design Review Committee members present shall constitute action of the Design Review Committee. Owners acknowledge that Design Review review is inherently a subjective process and that the Design Review Committee is given wide discretion in carrying out its function. The decisions of the Design Review Committee shall be final and binding.

3.10 Variances. The District No.1 Board or the Design Review Committee shall have the authority to grant for a Lot a variance from any provision of this Declaration (including any provision of the Design Guidelines) that is within the authority of the District No. 4 Board or the Design Review Committee, as the case may be. Such variance will only be made upon a finding of exceptional and extraordinary circumstances where literal enforcement of the covenant will create a material hardship to the applicant, and that such a variance is not contrary to the interests of Windermere, District No. 4, the Districts and Owners. A variance may be made subject to terms and conditions approved by the District No. 4 Board or the Design Review Committee. If a variance is denied, the applicant may not bring another application for a similar variance for the same Lot for a period of one year after submittal of the original request.

3.11 No Liability. The Declarant, District No. 4, the Districts and the Design Review Committee, and any member, agent or representative thereof, shall not be liable in damages or otherwise to anyone submitting plans for approval or requesting a variance, or to any Owner or other Person, by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the Plans or variance. Approval of plans shall not mean that plans are in compliance with the requirements of any local building codes, zoning ordinances, or other governmental regulations, and it shall be the responsibility of the Owner, Builder or applicant to comply with all codes, ordinances and regulations.

3.12 Design Review Non-Compliance. If an Owner is in violation of the provisions of this Article or the Design Guidelines, the violation will be processed in accordance with Article 4 of this Declaration.

ARTICLE 4  
ENFORCEMENT AND DELEGATION OF AUTHORITY

4.01 Adoption of Rules and Regulations. The District No. 4 Board may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the use and enjoyment of District Properties, and the use of any other property within Windermere, including Lots. Any such Rules and Regulations will be reasonable and uniformly applied as determined by the District No. 4 Board in its sole discretion. The Rules and Regulations may provide for the assessment of fines for a violation of this Declaration or the Rules and Regulations. Written notice of the adoption, amendment or repeal of any Rule or Regulation will be provided to all Owners, and copies of the currently effective Rules and Regulations will be made available to each Owner upon request. Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, this Declaration shall control. An owners association or District which has been delegated authority by the District No. 4 Board to adopt, amend or repeal Rules and Regulations may so adopt, amend or repeal only with the written approval of the District No. 4 Board.

4.02 Notice and Hearing. If the District No. 4 Board determines a violation of this Declaration or the Rules and Regulations by an Owner or other Person has occurred, the District No. 4 Board or its designated representative shall give written notice to the Owner or other Person of the violation and the scheduling of a hearing by the District No. 4 Board or its designated representative. The notice shall provide the day, time and location of the hearing. The notice shall be hand-delivered or sent by U.S. Mail, postage prepaid, to the Owner or Person alleged to be in violation not less than ten (10) days prior to the scheduled hearing date. The hearing may be audiotaped by the District No. 4 Board. The District No. 4 Board or its designated representative and the Owner or other Person will have the opportunity to present evidence in support of their respective positions. Within ten (10) days of the hearing, the District No. 4 Board or its designated representative will issue its decision. The hearing will occur whether or not the Owner or other Person attends the hearing, absent extraordinary circumstances as determined by the District No. 4 Board or its designated representative, to hear evidence concerning the violation and render a decision. The District No. 4 Board has the right to assess fines against an Owner or Person found to be in violation. The decision shall be final and binding.

4.03 Failure to Remedy Violation. If an Owner is found to be in violation of the Declaration after Notice and Hearing, and fails to remedy such violation within forty-five days after a decision under Section 4.02 is rendered, the District No. 4 Board may record a notice of non-compliance or notice of lien on the Owner's Lot. The notice will substantially set forth: (a) the amount of the monetary lien or description of the violation, (b) the interest and expenses of collection which have accrued, if any; (c) the legal description and street address of the Lot against which the lien is claimed or violation has occurred, and (d) the name of the record

Owner. The notice shall be signed and acknowledged by an officer of the District No. 4 Board or its duly authorized agent. The amounts claimed under the lien may include, without limitation, all collection expenses, attorney fees, court costs, recording costs and filing fees. Upon an Owner's payment in full or the remedying of the violation, the District No. 4 Board shall execute and record a release of the notice on the Owner's Lot. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosures of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law.

In addition to, or as an alternative to, recording a notice on an Owner's Lot, if an Owner or Person has failed to remedy the violation within forty-five (45) days after a decision under Section 4.02 is rendered, the District No. 4 Board may remove the violation or otherwise remedy the non-compliance, and the Owner or Person responsible for the violation shall reimburse the District No. 4 Board, upon demand, for all costs and expenses incurred by the District No. 4 Board in remedying the violation.

4.04 Delegation of Authority. Subject to limitations set forth elsewhere in this Declaration, the District No. 4 Board shall have the right to delegate all or a portion of its design review and covenant enforcement rights and obligations under this Declaration to the Board of the District within which the Property is located, or to one or more owners associations within Windermere. Such delegation will occur by separate written agreement between the District No. 4 Board and the District Board, or board of the owners association. A delegation to an owners association by the District No. 4 Board shall also include the right of the owners association to levy and collect assessments from Owners to pay for the obligations of the owners association delegated to it under this Declaration. Notwithstanding such delegation, the District No. 4 Board shall always maintain the right, but not the obligation, to enforce the provisions of this Declaration, Design Guidelines and the Rules and Regulations if the District Board, an owners association, Owner or Declarant fails to enforce the same.

## ARTICLE 5 EASEMENTS

5.01 District Easement. An easement to enforce its rights or perform its obligations pursuant to this Declaration is hereby granted to District No. 4, its officers, agents, employees, representatives and assigns, upon, across, over, in and under all property within Windermere, including all Lots, together with the right to make such use of Windermere as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

5.02 Easements for Utilities. Declarant hereby creates and reserves to itself until Declarant no longer owns any real property within the Property, and thereafter, to District No. 4, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the utility easements of each Lot as shown on a Plat for the placement of utilities, drainage structures or other similar purposes, together with a blanket easement across, over and under the District Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities and drainage facilities.

5.03 Easement for Emergency Vehicles. An easement is granted for emergency vehicles, including fire, police and ambulance, to enter upon any portion of Windermere for emergency and other official purposes.

5.04 Matters of Record. In addition to the easements created in this Article and on any Plat, the Property is subject to all other easements, reservations and restrictions of record in El Paso County, Colorado.

## ARTICLE 6 MISCELLANEOUS

6.01 Persons Entitled to Enforce Declaration. District No. 4 (acting by authority of the Board); any District Board or owners association with enforcement authority which has been delegated to it by written agreement with District No. 4; the Declarant, or any Owner (acting on such Owner's own behalf), shall have the right, but not the obligation, to enforce any or all of the provisions, covenants, conditions or restrictions contained in this Declaration. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Declaration, and all other rights and remedies provided in the Declaration or available at law or in equity.

6.02 Term of Declaration. This Declaration shall be effective for **twenty (20)** years following the date this Declaration was originally recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless it is terminated by the written approval of Declarant (until such time as Declarant no longer owns real property within the Property and thereafter, the District No. 4 Board) and at least sixty-seven percent (67 %) of all Owners. The written agreement shall be duly acknowledged by the Declarant (or District No. 4 Board) and the Owners and recorded in the records of El Paso County.

6.03 Amendment of Declaration.

- (a) Except as otherwise provided in this Declaration, and subject to the written approval of Declarant, any provision, covenant, condition, or restriction in this Declaration may be amended, rescinded, added or modified upon written approval by at least sixty-seven percent (67%) of all Owners.
- (b) This Declaration may be amended at any time by Declarant without the consent or approval of any other Owner or any other Person, in order to comply with the requirements, standards, or guidelines of the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, including the Federal Housing Administration, the Veterans Administration, or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities. Declarant's right of amendment herein shall terminate at such time as Declarant no longer owns land within the Property.

- (c) No challenge to an amendment of this Declaration shall be effective unless it is challenged within one (1) year of the date of recordation of such amendment.
- (d) An amendment to this Declaration shall be acknowledged by the Declarant (or District No. 4 Board) and shall contain a certification that written approval of such amendment was given by at least sixty-seven percent (67%) of all Owners of Lots within the Property, and shall be recorded in the records of El Paso County, Colorado
- (e) Notwithstanding anything in this Declaration to the contrary, no rule or regulation may be adopted, and no amendment to this Declaration may be made that would restrict or prohibit an Owner from leasing, in accordance with applicable laws, any Home on a Lot, without the written consent of all Owners that would be impacted by such rule, regulation or amendment. This section 6.03 may not be amended or removed without the written consent of all Builders.

6.04 Notices. Any notice given under this Declaration shall be in writing and may be served either personally, by mail or by any other lawful means. If served by mail, the notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to District No. 4 for the purpose of service of such notice, or to the Lot of such Person if no address has been given to District No. 4, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the U.S. Postal Service. Such address may be changed from time to time by notice in writing to District No. 4.

6.05 Declarant's Right of Annexation and Withdrawal. For so long as Declarant owns real property within the Property, Declarant reserves the right to: a) annex additional land into this Declaration by recording a written document in the records of El Paso County, Colorado, provided that the owner of the annexed property has consented to the annexation; and b) withdraw all or any portion of the Property from this Declaration by recording a written document in the records of El Paso County, Colorado, provided that the owner of the property consents to the withdrawal; and further, that the quality, value, desirability and attractiveness of Windermere is not materially affected by such withdrawal.

6.06 Violations of Law. Any violation of any federal, state, county or municipal law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration. There shall be no obligation or duty of District No. 4 to undertake the enforcement of the laws, ordinances, rules or regulations of other governmental entities.

6.07 Remedies Cumulative. Each remedy provided under the Declaration is cumulative and not exclusive.

6.08 Limitation on Liability. District No. 4, the Districts, Declarant, the Design Review Committee, and their officers, directors, shareholders, managers, members, partners,

agents or employees, shall not be liable to any Person for any action or for any failure to act if such action or failure to act was in good faith and without malice.

6.09 Representations and Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, any Builder, District No. 4, the Districts, or by any of their officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless specifically set forth in writing.

6.10 Disclaimer Regarding Safety. DECLARANT, THE BUILDERS, DISTRICT NO. 4 AND THE DISTRICTS, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE BUILDERS, DISTRICT NO. 4 AND THE DISTRICTS, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.

6.11 Costs and Attorney Fees. In any action or proceeding to enforce any provision of the Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, court costs, and collection costs.

6.12 Governing Law. The Declaration shall be construed and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding shall be in El Paso County, Colorado.

6.13 Alternative Dispute Resolution. The use of alternative dispute resolution methods (e.g., mediation, arbitration) rather than court action to resolve disputes arising out of this Declaration is encouraged. The District No. 4 Board may adopt Rules and Regulations concerning alternative dispute resolution processes that will be used in resolving disputes arising out of this Declaration.

6.14 Severability. Each of the provisions of the Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

6.15 Number. Unless the context requires a contrary construction, as used in the Declaration, the singular shall include the plural and the plural, the singular.

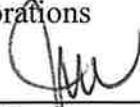


6.16 Declarant Approvals. Any reviews, approvals or permissions that any Builder hereunder is required to obtain or submit may be made or granted by the Declarant in place of the District or Design Review Committee.

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective as of the day and year first written above.

**DECLARANT:**

Eagle Development Company, Lorson South Land Corp. and Babcock Land Corp., all Colorado corporations

By:   
\_\_\_\_\_  
**Jeff Mark**  
**Vice President**

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

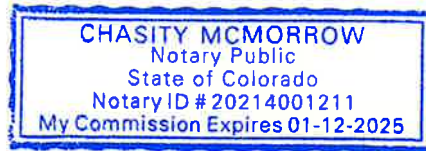
The foregoing instrument was acknowledged before me this 21st day of April 2022 by Jeff Mark, Vice President of Eagle Development Company, Lorson South Land Corp. and Babcock Land Corp., all Colorado corporations, Declarant.

Witness my hand and official seal.

{ S E A L }

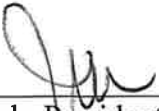
  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-12-2025



**ACKNOWLEDGED AND APPROVED:**

**The Sands Metropolitan District No. 4**

By:   
Jeff Mark, President of the Board

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this 21st day of April 2022, by Jeff Mark as President of the Board of The Sands Metropolitan District No. 4.

Witness my hand and official seal.

{S E A L}

  
Notary Public

My Commission expires: 01-12-2025



## EXHIBIT A

### Windermere Filing No. 1, County of El Paso, State of Colorado but excluding Tract B.

A PARCEL OF LAND LYING WITHIN THE EAST HALF OF SECTION 29, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPLE MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, CHATEAU AT ANTELOPE RIDGE FILING NO. 2, AS SHOWN ON THE PLAT THEREOF RECORDED UNDER RECEPTION NO. 202192387, OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO, SAID CORNER ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF ANTELOPE RIDGE DRIVE AND CONSIDERING THE SOUTH LINE OF SAID LOT 1, AS SHOWN ON SAID PLAT, TO BEAR N89°56'53"E, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE THE FOLLOWING TEN (10) COURSES ALONG THE SOUTH LINE OF CHATEAU AT ANTELOPE RIDGE FILING NO. 2:

1. N89°56'53"E, 670.94 FEET;
2. S77°13'21"W, 296.79 FEET;
3. S14°41'09"E, 81.11 FEET;
4. S77°39'54"E, 397.87 FEET;
5. N63°24'07"E, 97.95 FEET;
6. N47°01'52"E, 173.02 FEET TO A POINT OF NON-TANGENT CURVE CONCAVE TO THE SOUTH, FROM WHICH THE RADIAL LINE BEARS S26°27'56"E, 50.64 FEET;
7. 54.06 FEET ALONG THE ARC OF SAID CURVE, SAID ARC HAVING A RADIUS OF 50.64 FEET, A CENTRAL ANGLE OF 61°10'00", AND BEING SUBTENDED BY A CHORD THAT BEARS S85°52'56"E, 51.63 FEET;
8. S50°34'05"E, 287.41 FEET;
9. N03°10'04"W, 254.58 FEET;
10. N89°56'53"E, 70.30 FEET;

THENCE N89°24'24"E, 58.36 FEET TO THE WEST RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD AS DESCRIBED IN THAT DOCUMENT RECORDED UNDER RECEPTION NO. 209071394 OF THE RECORDS OF EL PASO COUNTY; THENCE THE FOLLOWING FIVE (5) COURSES ALONG THE SAID WEST RIGHT-OF-WAY LINE:

1. S00°36'10"E, 53.57 FEET TO A POINT OF CURVE TO THE RIGHT;
2. 460.83 FEET ALONG THE ARC OF SAID CURVE TO A POINT TANGENT, SAID ARC HAVING A RADIUS OF 7920.00 FEET, A CENTRAL ANGLE OF 03°20'02", AND BEING SUBTENDED BY A CHORD THAT BEARS S01°03'51"W, 460.76 FEET;
3. S02°43'52"W, 207.46 FEET TO A POINT OF CURVE TO THE LEFT;
4. 447.12 FEET ALONG THE ARC OF SAID CURVE, SAID ARC HAVING A RADIUS OF 8580.00 FEET, CENTRAL ANGLE OF 02°59'09" AND BEING SUBTENDED BY A CHORD THAT BEARS S01°14'18"W, 447.07 FEET;
5. S00°15'17"E, 553.34 FEET;

THENCE S89°45'06"W, 150.34 FEET; THENCE S00°14'54"E, 33.28 FEET; THENCE N90°00'00"W, 125.29 FEET TO A POINT OF CURVE TO THE LEFT;

THENCE 169.67 FEET ALONG THE ARC OF SAID CURVE TO A POINT OF REVERSE CURVE, SAID ARC HAVING A RADIUS OF 475.00 FEET, A CENTRAL ANGLE OF 20°27'58" AND BEING SUBTENDED BY A CHORD THAT BEARS S79°46'01"W, 168.77 FEET; THENCE 264.28 FEET ALONG THE ARC OF SAID REVERSE CURVE TO A POINT TANGENT, SAID ARC HAVING A RADIUS OF 740.00 FEET, A CENTRAL ANGLE OF 20°27'45" AND BEING SUBTENDED BY A CHORD THAT BEARS S79°45'54"W, 262.88 FEET;

THENCE S89°59'46"W, 177.94 FEET TO THE EAST RIGHT-OF-WAY LINE OF ANTELOPE RIDGE DRIVE; THENCE THE FOLLOWING FOUR (4) COURSES ALONG THE EAST RIGHT-OF-WAY LINE OF ANTELOPE RIDGE DRIVE:

1. N00°00'18"W, 202.36 FEET TO A POINT OF CURVE TO THE LEFT;
2. 762.65 FEET ALONG THE ARC OF SAID CURVE TO A POINT OF REVERSE CURVE; SAID ARC HAVING A RADIUS OF 1280.00 FEET, A CENTRAL ANGLE OF 34°08'17" AND BEING SUBTENDED BY A CHORD THAT BEARS N17°04'26"W, 751.42 FEET;
3. 928.37 FEET ALONG THE ARC OF SAID REVERSE CURVE TO A POINT TANGENT, SAID ARC HAVING A RADIUS OF 1560.00 FEET, A CENTRAL ANGLE OF 34°05'50" AND BEING SUBTENDED BY A CHORD THAT BEARS N17°05'40"W, 914.73 FEET;
4. N00°09'38"W, 35.51 FEET TO THE POINT OF BEGINNING.

THE ABOVE PARCEL CONTAINS AN AREA OF 1,865,088 SQUARE FEET (42.8165 ACRES) OF LAND, MORE OR LESS.