

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

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PARK (the “Declaration”) is entered into on this ____ day of _____, 2025, by and between CPA ARBOUR COMMONS DST, a Delaware statutory trust (“Owner”), and CITY OF WESTMINSTER, a Colorado home rule municipal corporation (the “City”). The Owner and the City are collectively referred to herein as the “Parties.”

RECITALS

A. OTC Two, LLC, a Colorado limited liability company (the “Prior Owner”) constructed a multi-family residential apartment community, known as the Arbour Commons Apartments, within the boundaries of 144th Avenue Metropolitan Districts Nos. 1 and 2 (collectively, the “Districts”), and located at 663 W 148th Avenue, Westminster, Colorado (the “Arbour Commons Property”).

B. The Arbour Commons Apartments is the sole development located within the boundaries of the Districts.

C. As part of the development of the Arbour Commons Apartments, the City approved, via Resolution No. 24, Series of 2013, an Amended and Restated Consolidated Service Plan for 144th Avenue Metropolitan District Nos. 1 and 2 (the “Amended Service Plan”), to provide the parameters for the construction, operation and maintenance of certain “Public Improvements” within the Arbour Commons development, which Public Improvements consist of a 0.85 acre parcel of land located at the northwest corner of Fox Street and West 148th Avenue in the City, as more particularly described in **Exhibit A**, attached hereto and incorporated by reference (the “Park Property”), to be developed as a public park (the “Park”).

D. Pursuant to Sections I.A., V.B., IX, and X of the Amended Service Plan, the financing and construction of the Public Improvements for the Park were the sole responsibility of the Prior Owner, and the Public Improvements would be dedicated to the 144th Avenue Metropolitan District No. 1 (the “Operating District”), at no cost to the Operating District, for ownership, operation, and maintenance by the Operating District.

E. Pursuant to Section XII of the Service Plan, the Operating District was authorized to impose a Park Facility Fee directly against the owners of taxable property within the boundaries of 144th Avenue Metropolitan District No. 2 on an annual basis to pay the Operating District’s costs associated with the operation and maintenance of the Public Improvements.

F. The Prior Owner dedicated the Property for the Park to the Operating District at no cost via Quitclaim Deed, as recorded in the records of the Adams County Clerk and Recorder on June 2, 2014, at Reception No. 2014000033543.

G. On December 8, 2016, the Prior Owner completed the Public Improvements for the Park and conveyed all Public Improvements to the District at no cost via Bill of Sale.

H. On September 19, 2022, the Prior Owner sold and conveyed the Arbour Commons Property to Owner, and Owner now pays the Park Facility Fee imposed by the Operating District for costs associated with the Operating District's operation and maintenance of the Park, inclusive of the Public Improvements (hereinafter, reference to the "Park" shall mean and include the Public Improvements within the Park and the Park Property).

I. The Parties have determined it would be more cost effective and efficient for Owner to own, operate and provide ongoing maintenance for the Park, and therefore the Operating District has or will convey the Park to Owner to operate and maintain the Park, subject to the terms of this Declaration.

J. The Districts have sought the City's consent to dissolve upon conveyance of the Park to Owner.

K. The Parties are recording this Declaration against the Property to establish certain covenants, conditions and restrictions to ensure the Park remains available and open to the public and is operated and maintained in accordance with City standards.

ARTICLE I MAINTENANCE OF PARK

Section 1.1 General Maintenance. Owner shall cause to be maintained and kept in good condition and state of repair the Park, including all park improvements, shade trees, and landscaping constructed, installed, or otherwise existing within the Park. Owner may contract with third parties to perform maintenance, repair, and upkeep obligations set forth hereunder, provided that Owner shall remain ultimately responsible for the performance of such work and all costs related thereto. Maintenance of the Park shall comply with City standards for maintaining City-owned parks and shall include, but not be limited to, the following:

- a. Mowing, fertilizing, landscaping, mulching, grooming, irrigating, and replacing or repairing the automatic sprinkler systems or water lines within the Park, and otherwise maintaining and replacing the plantings, trees, and landscaping as may be needed;
- b. Maintain all improvements within the Park in a safe working condition and repair and replace improvements as needed to ensure the safety of all Persons (as defined below) using the Park;
- c. Maintain the existing lighting of the Park;
- d. Removing all litter, trash, refuse and waste from the Park, and

Section 1.2 City Inspections. The City, in its discretion, may inspect the Park at any time to ensure the Park is maintained in accordance with the provisions set forth herein and in accordance with City standards for maintaining City-owned parks. The City may provide notice to Owner to maintain, repair or replace any park improvements, including landscaping, which the City

determines to be in violation of this Declaration or any City code, rule or regulation, and may impose fines on Owner if Owner fails to comply with the City notice; provided, however, that the City cannot require Owner to replace any improvements for the sole purpose of upgrading the improvements if the existing improvements remain in good working order and in safe condition.

ARTICLE II OPERATION AND USE RESTRICTIONS

Section 2.1 Open to the Public. Owner shall ensure the Park is open to all Persons during the times City-owned parks are open. For the purposes of this Declaration, “Persons” shall mean and include all members of the general public, including residents and nonresidents of Arbour Commons.

Section 2.2 No Encumbrance. Owner shall ensure the Park is not encumbered at any time by any deed of trust, mortgage, or similar instrument, or permit any mechanic’s, materialmen’s, or other similar liens to stand against the Park on which such labor or material has been furnished in connection with any work performed within the Park.

Section 2.3 Park Layout. In the event Owner desires to change or modify the original layout of the Park, including the removal, upgrade or addition of improvements therein, Owner shall obtain approval from the City’s Parks, Recreation and Libraries Administrative Office (the “Parks Office”) and any other approvals that the City may require.

Section 2.4 No Temporary Structures. Except as may be needed as part of Owner’s maintenance of the Park, Owner shall ensure the Park is kept free and clear of all construction vehicles and trailers, tents, shacks, or any other temporary structure.

Section 2.5 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any improvement within the Park, Owner shall cause the damaged or destroyed improvement to be repaired or replaced within sixty (60) days of the damage or destruction. Owner shall notify the Parks Office if additional time will be required to repair or replace the damaged or destroyed improvement.

Section 2.6 Hazardous Activities/Fires. Owner shall ensure that no activities shall be held at the Park that are or might be unsafe or hazardous to any Person or to the Property. Without limiting the generality of the foregoing, no firearms shall be discharged, no exploding fireworks shall be set off, and no open fires shall be permitted.

Section 2.7 Insurance. Owner shall maintain appropriate insurance coverage on the Park at all times including, but not limited to, general liability, personal injury, and property damage coverage.

Section 2.7 Park Rules. Owner may implement and post rules for use of the Park, provided that such rules are not more restrictive than rules imposed on City-owned parks.

ARTICLE III DURATION, AMENDMENT AND TERMINATION

Section 3.1 Duration. The covenants, conditions and restrictions contained in this Declaration shall run with the Property, be binding on Owner and all successors and assigns of Owner, and be in effect in perpetuity unless this Declaration is otherwise amended or terminated as provided in Section 3.2 hereof.

Section 3.2 Amendment and Termination. This Declaration may not be amended or terminated without prior written approval of the City. Any amendments or termination of this Declaration shall be set forth in writing and recorded in the records of the Adams County Clerk and Recorder.

ARTICLE IV GENERAL PROVISIONS

Section 4.1 No Liability. Neither the City nor the District shall be held liable to Owner or any Persons for any property damage, injury, or death to any Persons arising directly or indirectly from the use of the Park by any Persons or from any activities of any Persons or Owner-sponsored events occurring in and around the Park.

Section 4.2 Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the City pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

Section 4.4 Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado.

Section 4.5 Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration.

Section 4.6 Captions. The captions preceding the text of each paragraph and subparagraph hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.

Section 4.7 Binding Effect. This Declaration and all covenants, conditions, restrictions, and other provisions hereof shall run with, and be appurtenant to the land affected, and all such terms shall inure to the benefit of and be binding upon the undersigned Owner and its respective successors and assigns who become owners of the Park.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Declaration as of the day and year first written above.

CITY:

CITY OF WESTMINSTER

Jody Andrews, City Manager

ATTEST:

City Clerk

Approved as to legal form:

City Attorney's Office

OWNER:

CPA ARBOUR COMMONS DST,
a Delaware statutory trust

By: _____
Title: Authorized Signatory

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2025, by _____ as authorized signatory for CPA ARBOUR
COMMONS DST, a Delaware statutory trust.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Outlot B, Second Replat of The Orchard at Westminster Filing No. 2, City of Westminster, County of Adams, State of Colorado, as recorded in the Adams County Clerk and Recorder's Office on May 23, 2013, at Reception No. 2013000044153.