

AGREEMENT REGARDING COVENANT ENFORCEMENT AND DESIGN REVIEW SERVICES

THIS AGREEMENT REGARDING COVENANT ENFORCEMENT AND DESIGN REVIEW SERVICES (the “**Agreement**”), is made and entered into as of the 1st day of November, 2016, with an effective date of January 1, 2017, by and between the CHATFIELD CORNERS OWNERS’ ASSOCIATION, a Colorado non-profit corporation (the “**Association**”), and CHATFIELD CORNERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”).

RECITALS

A. The Association is the “Association” as defined in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Chatfield Corners dated April 23, 2002, and recorded on January 7, 2003, at Reception No. 819483 in the real property records of Eagle County, Colorado (the “**Declaration**”), and has certain powers, duties and obligations as described in the Declaration.

B. The District was organized to provide those certain services and to exercise those certain powers as are more specifically set forth in the District’s Service Plan, approved by the Town Council of the Town of Gypsum (the “**Town Council**”) on March 12, 2002 (the “**Service Plan**”).

C. The Declaration authorizes the Association to contract or cooperate with the District pursuant to which the Association may delegate and the District may assume the Association’s rights and obligations regarding the Services (as defined below).

D. To promote efficient administration and enforcement of the Declaration and compliance with the Design Guidelines promulgated thereunder, the Association desires to engage the District to perform covenant enforcement and design review services which the Association is obligated to perform pursuant to the Declaration (the “**Services**”), and the District desires to be so engaged.

E. It is anticipated the District will adopt a resolution of its Board of Directors (i) acknowledging the District’s powers to enforce covenants pursuant to state statute, including, but not limited to, performing all functions of the Design Review Board, and the intention of the District to provide for uniform enforcement of the covenants created under the Declaration; and (ii) authorizing the Board of Directors to implement and facilitate such uniformity in the provision of the Services throughout the District’s boundaries.

F. The District and the Association have determined it is in the best interests of the inhabitants of the District for the District to perform the Services.

G. The District obtained the consent of the Town Council to provide the Services pursuant to a letter agreement dated September 9, 2016.

H. The Association and District (each referred to herein as a “**Party**”, or collectively, as the “**Parties**”) desire to set forth the terms under which the District will perform the Services.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into and made a part of this Agreement.

2. Engagement. The Association hereby engages the District to perform the Services and the District hereby accepts such engagement and agrees to perform the Services within the District's boundaries. The District is an independent contractor; accordingly, the Association shall not be responsible for the District's means, methods, techniques, sequences or procedures of work of the District or safety precautions incident thereto.

3. District's Duties. The District shall perform the duties specified in subsection (b) below. The District shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Association in any manner whatsoever, except to the extent provided in this Agreement or specifically authorized in writing and executed by both Parties.

(a) Compliance with Applicable Laws. The District shall provide the Services in full compliance with all applicable laws, rules and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction over the activities of the District.

(b) Specific Duties. The District shall perform the following: (i) enforce the covenants set forth in the Declaration by any legal means, such enforcement to specifically include the power to determine, assess and collect reasonable fines; and (ii) perform all functions of the Design Review Board as described in the Declaration, including, but not limited to promulgation, revision and enforcement of the Design Guidelines, as defined in the Declaration.

(c) Limitation. The Association and the District acknowledge and agree that nothing set forth herein is intended to, nor shall it be construed to, entitle the District to have or exercise any power, remedy or right different from or in excess of any power, remedy or right that the Association has or could exercise under the Declaration.

4. Payment; Expenses. The District and the Association have entered into this Agreement to, among other things, effect a net reduction in costs and fees payable by their respective users, members, owners and constituents by elimination and streamlining of duplicative and overlapping services. The Association is and will be benefitted by significantly reduced operating costs if and to the extent the District performs the Services. The District acknowledges that its performance of the Services is a governmental function expressly authorized by Colorado statutes. Accordingly, the Association shall not be obligated to pay or reimburse the District for the performance of the Services. The District shall be responsible for and pay all expenses it incurs in performance of the Services. Notwithstanding anything to the contrary in the foregoing, the District is authorized to collect, retain and spend the full amount of taxes, charges and fees collected by the District, and such revenue may be used towards the expenses incurred by the District through performance of the Services.

5. Term and Termination. The term of this Agreement shall commence upon full execution of this Agreement and shall continue to be in full force and effect for perpetuity unless and until either or both of the Parties agree to terminate the same by providing no less than sixty (60) days' prior written notice (the "**Termination Date**"). Such notice shall specify the Termination Date. Either Party may terminate this Agreement with or without cause. During the transition period following the Termination Date, the Parties agree to work cooperatively and the District shall transmit any and all books, documents, papers and records regarding the Services to the Association.

6. Records and Reports. Throughout the term of this Agreement and for a period of three (3) years following the Termination Date, the District shall maintain and preserve books, documents, papers and records of any contractors or service providers providing Services and make the same available to the Association and any of its authorized representatives upon request.

7. Insurance. The District shall maintain appropriate insurance limits and coverage related to the provision of the Services described herein, and the District shall also require all service contractors to meet appropriate minimum insurance requirements.

8. Miscellaneous.

(a) Liability of the District. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the District shall constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation. All financial obligations of the District are subject to annual budget and appropriation. Nothing set forth herein shall waive or be construed as a waiver of the rights, privileges and immunities of the District pursuant to the Colorado Governmental Immunity Act, §24-10-101, *et. seq.*, C.R.S., as the same may be amended from time to time.

(b) Assignment. Neither this Agreement, nor any of the Parties' rights, benefits, obligations, or duties hereunder may be assigned or delegated in whole or in part by either Party without the prior written consent of the other Party which consent shall not be unreasonably withheld, conditioned or delayed. Any purported delegation or assignment without such consent shall be void.

(c) Integration. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement shall be valid or binding.

(d) Headings for Convenience Only. The headings, captions and titles contained herein are intended for convenience and reference only.

(e) Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, or by electronically-confirmed electronic mail, or by depositing same in the United States mail, postage prepaid, addressed as follows:

District: Chatfield Corners Metropolitan District
c/o Marchetti & Weaver, LLC
28 Second Street, Suite 213
Edwards, CO 81632
Attn: Kenneth J. Marchetti, CPA
Phone: (970) 926-6060
Email: Ken@rmpccpa.com

With a copy to: McGeady Becher P.C.
450 E. 17th Ave., Suite 450
Denver, Colorado 80203
Attn: Mary Jo Dougherty
Phone: (303) 592-4380
Email: mdougherty@specialdistrictlaw.com

Association: Chatfield Corners Owners' Association
c/o Marchetti & Weaver, LLC
28 Second Street, Suite 213
Edwards, CO 81632
Attn: Kenneth J. Marchetti, CPA
Phone: (970) 926-6060
Email: Ken@rmpccpa.com

With a copy to: Executive Board
Chatfield Corners Owners' Association
P.O. Box 970
Gypsum, Colorado 81637

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service, on the date of transmission if sent by confirmed electronic mail or three (3) business days after deposit in the United States mail. By giving the other Party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information.

(f) Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

(g) Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, including, but not limited to, termination of this Agreement as provided herein. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or

conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

(h) Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the District Court in and for the County of Eagle, Colorado.

(i) Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

(j) Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

(k) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

(l) Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the Parties unless the same is in writing and duly executed by the Parties hereto.

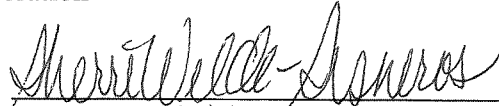
(m) Non-Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement Regarding
Covenant Enforcement and Design Review Services as of the day and year first above written.

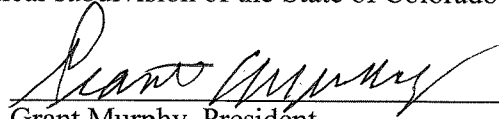
Association:

CHATFIELD CORNERS OWNERS'
ASSOCIATION, a Colorado non-profit
corporation


By: 
Sherri Wilde-Sisneros Vice-President

District:

CHATFIELD CORNERS METROPOLITAN
DISTRICT, a quasi-municipal corporation and
political subdivision of the State of Colorado

By: 
I Grant Murphy, President

Attest:


David W. Barton, Secretary