

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS
FOR 10120 AND 10124 COORS BOULEVARD

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS is made effective this October 15, 2024, by **CDR Holding LLC**, a New Mexico limited liability company ("Developer"), which declares that the real property comprised of all of the lots, parcels, and sites, platted or unplatted, legally described on Exhibits "A" and "B" attached hereto and incorporated herein by reference, to be known in the aggregate as the "**Project**", which is currently owned by the Developer, is and shall be held, transferred, sold, conveyed, leased and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as the "**Declaration**" or "**ECR**") hereinafter set forth.

ARTICLE I
PURPOSE

The purpose of this ECR is to provide easements, covenants, and restrictions that ensure the Project will always be maintained as a workable, attractive, quality-oriented, business environment.

ARTICLE II
DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

Section 2.1 "**Applicable Laws**" shall mean and refer to any and all laws, statutes, codes, regulations, ordinances or other governmental or quasi-governmental regulations applicable to and binding on the Project.

Section 2.2 "**Architectural Review Committee**" or "**ARC**" shall initially be comprised of the Developer and shall have the powers and duties as set forth herein. The Developer shall have the right to transfer responsibility and designate other members of the ARC as provided herein below.

Section 2.3 "**Building**" shall mean any constructed improvement as may be allowed within a Lot which contains enclosed space, for which the conduct of office, retail, service or other occupancy is created, including walls, facades, patios, porticos, porches, drive thru lanes, exclusive loading and unloading areas, and trash enclosures and appurtenances, and will also include canopies, underground storage tanks, multi-product dispensers and outdoor sales areas, as the same are approved as required hereunder.

Section 2.4 "**Common Area**" shall mean and refer to those portions of the Project excluding the Buildings and Dedicated Utilities but specifically including all common utilities, shared utility lines and meters, entry features, common signage, drainage (surface and subsurface), sidewalks, roads, drive aisles, access drives, rights-of-way, parking, or any other use or area designated by the Developer for the mutual benefit of Developer, Owners, and/or

Occupants of all or a portion of the Project. The Developer declares that all of the Common Areas, whether owned or held by Developer or any Owner, are subject to the reciprocal easements as provided for in and subject to Article IV herein below, for the mutual benefit of the Developer, Owners and/or Occupants for the above recited purposes, including the rights of ingress, egress, service and accommodation of the general public who have legitimate business with Developer, any Owner, Occupant, tenant or lessee of all or any portion of the Project.

Section 2.5 **"Dedicated Utilities"** shall mean and refer to utility lines and meters that exclusively serve the Lot upon which they are located.

Section 2.6 **"Developer"** shall mean and refer to CDR Holding LLC, a New Mexico limited liability company, its successors and assigns of any or all of its rights under this Declaration.

Section 2.7 **"Improvements"** shall mean and refer to any man-made alterations to the Project including, but not limited to, structures and construction of any kind, whether above or below the property surface, such as any Building, fence, wall, sign, addition, alteration, screen enclosure, sewer, drain, disposal, lake, waterway, road, paving, utilities (shared or dedicated), grading, landscaping and exterior illumination, as well as construction within the public right of way adjacent to the Project that is serving the Project.

Section 2.8 **"Individual Lot Improvements"** shall mean and refer to those Improvements that are benefitting only a single Lot when said Improvements are not located on such Lot. The Developer shall, from time to time, designate those Improvements that are Individual Lot Improvements. There may be multiple, separate Individual Lot Improvements within the Project. Individual Lot Improvements may be constructed by the Developer or may be constructed by Owner or Occupant of the benefitting Lot upon approval by the Developer. The responsibility for the cost of construction of any Individual Lot Improvement shall be subject to a separate agreement between the Owner(s) of the benefited Lot(s) and Developer, when applicable. Each Owner whose Lot benefits from an Individual Lot Improvement shall be responsible for the construction, repair and maintenance of said Individual Lot Improvement and shall be responsible for ensuring such construction, repair and maintenance does not materially and adversely interfere with access of the Lot which contains the Individual Lot Improvements.

Section 2.9 **"Lot"** shall mean and refer to any legally defined parcel of the Project, together with any and all Improvements thereon, created and existing by a plat recorded before, with or after the date of this Declaration in the public records of Bernalillo County, New Mexico, on which any Improvement could be constructed, whether or not it has been constructed. The term Lot specifically includes Tract 13-A of Black Ranch and further described in Exhibit A ("Lot 13-A") and Lot 1A, a portion of Lot 1 as shown on the Replat Map for Tract C-2, Northeast portion of Black Ranch and further described in Exhibit B ("Lot 1A").

Section 2.10 **"Occupant"** shall mean and refer to any person or organization which has occupied, purchased, leased, rented or is otherwise licensed or legally entitled to occupy and/or use any Lot or Improvement or any portion thereof (whether or not such right is exercised), as well as their heirs, personal representatives, assigns and successors in interest.

Section 2.11 **"Owner"** shall mean and refer to the record owner, whether one or more partners, persons, trusts, corporations, or other entities, of the fee simple interest (but not contract sellers) to a Lot and including contract purchasers, their heirs, personal representatives, successors or assigns. An Owner may, upon written notice to the Developer, assign all or part of its rights, but not its duties hereunder, to Owner's Occupant. Notwithstanding the foregoing, it is the sole responsibility of Owner to ensure complete compliance of this ECR by any Occupant of the Owner's Lot.

Section 2.12 **"Project Development Plan and Design Criteria"** shall mean and refer to the development plan package as approved by the ARC and such other standards and guidelines for controlling the quality and character of the Improvements to be constructed on the Project which have been adopted by the ARC on or after the date of this Declaration and which may be reasonably amended from time to time by the ARC. Notwithstanding the foregoing, the Developer shall have the right amend the Project Development Plan and Design Criteria to change the size and boundaries of any Lot and the size and location of any Building, Common Area or Improvements on any Lot with the approval of the owner of said Lot. The Project Development Plan and Design Criteria shall be binding upon all Owners and Occupants of the Project.

Section 2.13 **"Project"** shall refer to the Project, any portion thereof, and any and all Improvements thereon and additions thereto, as are subject to this Declaration.

Section 2.14 **"Shared Project Signage"** shall mean and refer to the signage within the Project and designated in the Project Development Plan and Design Criteria to be shared by more than one Lot, if any, and ancillary improvements associated with said signage, including, without limitation, signage structures, cabinets, lighting and associated improvements including electrical circuits/equipment. The Developer shall designate which Lots shall benefit from each Shared Project Signage location and the size of each benefited Lots panel on said sign. There may be multiple, separate Shared Project Signage locations within the Project. Except for panel signage graphics, Shared Project Signage shall be constructed by the Developer unless otherwise agreed to by the Developer. The responsibility for the cost of construction of any Shared Project Signage shall be subject to a separate agreement between the Owners of the benefited Lots and the Developer. Each Owner whose Lot benefits from the Shared Project Signage shall be responsible for its Signage Proportionate Share of the repair and maintenance of said Shared Project Signage.

Section 2.15 **"Signage Proportionate Share"** shall mean a ratio whose numerator is the panel area of an advertising benefited Lot and whose denominator is the total panel area of all of the advertising benefited Lots. A separate Signage Proportionate Share shall be calculated for each individual Shared Project Signage. For the purposes of this definition, a Lot shall be deemed to have advertising when the sign graphics have been installed on the sign.

Section 2.16 **"Site Development Plan"** shall mean any submittals, drawings and conditions of approval as may be approved and granted administratively by the City of Albuquerque and the ARC in conjunction with developing or constructing Improvements on all

or a portion of any Lot.

ARTICLE III ARCHITECTURAL REVIEW COMMITTEE

Section 3.1 Necessity of Architectural Review and Approvals. No Improvement of any kind shall be commenced, constructed, erected, placed, altered or maintained upon any Lot, nor shall any addition, change or alteration thereon or thereof be made, nor shall any subdivision platting or replatting of any Lot be made, until Site Development Plan with respect thereto has been approved by the ARC. The Site Development Plan shall include any and all information as required by the ARC. The Site Development Plan shall be submitted to the ARC in PDF format over the signature of the Owner or the Owner's authorized agent together with a review fee of \$500.00 per submittal ("ARC Review Fee"). The ARC Review Fee is subject to reasonable revision by the ARC.

Section 3.2 Architectural Review Committee Review and Approval Process. Approval of the Site Development Plan shall be based upon, among other things, the conformity thereof with the Project Development Plan and Design Criteria. All submittals and approvals shall be made in accordance with the requirements of the ARC. The ARC shall not arbitrarily or unreasonably withhold its approval of the Site Development Plan. ARC approval does not constitute governing body approval, technical approval, compliance with governmental codes or suitability of the Improvements for Owner or Occupants intended use. The Project Development Plan and Design Criteria is subject to reasonable revision by the ARC; provided, however, any such revision will not require modifications, alterations or supplements of any kind to previously approved Improvements. The ARC will have thirty (30) days following receipt of a Site Development Plan to approve or object thereto. If the ARC does not respond to the Site Development Plan within such thirty (30) day period, then the submitting party shall resubmit the Site Development Plan and give written notice to the ARC that it has not responded to the initial request for approval of the Site Development Plan, no additional fee shall be charged for the resubmittal provided the Site Development Plan is exactly the same Site Development Plan that was submitted initially (the "Resubmittal"). Thereafter, if the ARC fails to respond within thirty (30) days following receipt of the Resubmittal, the Site Development Plan will be deemed approved.

Section 3.3 Powers and Duties. The ARC shall have the following powers and duties:

- A. To reasonably modify or amend the Project Development Plan and Design Criteria.
- B. To require submittals by Owners related to all Improvements.
- C. To approve or disapprove any Improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the Project and to approve or disapprove any exterior additions, changes, modifications or alterations therein, thereon or thereto. All decisions of the ARC shall in all events be final and dispositive upon all parties.
- D. If any Improvement is changed, modified or altered without prior approval of the ARC, then the Owner shall upon demand cause the Improvement to be restored to comply

with the Site Development Plan originally approved by the ARC and said Owner shall bear all costs and expenses of such restoration, including the costs and reasonable attorney's fees of the ARC.

E. To revise or waive the ARC Review Fee.

F. To perform such incidental acts as may be necessary in the exercise of its powers.

Section 3.4 Initial ARC. Developer shall serve as the initial ARC until such time as Developer assigns its rights hereunder and records notice thereof in the public records of Bernalillo County, New Mexico. All submittals and notices required to be sent to Developer shall be sent to:

CDR Holding LLC
3554 White Horse Dr SE
Rio Rancho, NM 87124
505.264.0510

Section 3.5 Liability. Neither the ARC, its individual members, the Developer nor their respective heirs, successors or assigns shall be liable for damages to anyone submitting Site Development Plan to them for approval, or to any Owner or Occupant affected by this Declaration, by reason of mistakes in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such Site Development Plan. Every person who submits Site Development Plan to the ARC for approval agrees, by submission of such Site Development Plan and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, that said Owner or Occupant will not bring any action or suit against the ARC, its members or Developer to recover any such damages.

Section 3.6 Limitation of Action. Notwithstanding anything to the contrary herein contained, after the expiration of three (3) year from the date of the issuance of a certificate of occupancy by the appropriate governmental authority for any Improvement or substantial completion thereof if no certificate of occupancy is required, said Improvement shall, in favor of purchasers, tenants and encumbrancers, in good faith and for value, be deemed to be in compliance with all provisions of this Article, unless: (i) the purchaser, tenant or encumbrancer has actual notice of such noncompliance or noncompletion; (ii) the ARC has filed of record a notice of noncompliance or noncompletion in the public records of Bernalillo County, New Mexico; or (iii) legal proceedings shall have been instituted to enforce compliance or completion.

ARTICLE IV COMMON AREAS

Section 4.1 Grant of Easements. Developer and each Owner hereby grants:

A.a perpetual, non-exclusive, reciprocal access easement for vehicular, pedestrian and bicycle ingress and egress over, upon and across the Common Areas of the Project as such Common Areas may exist from time to time, provided the Common Areas on Lot 1A shall

include access between Lot 13-A and the common boundary between Lot 1A and Lot 2A1 to the north, for the use of Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees;

B.a perpetual, non-exclusive, reciprocal cross drainage (surface and subsurface) easement over, under and across each Lot to Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees. In addition, each Lot shall comply with Applicable Laws regarding retention or detention requirements and such other requirements established under the Project Development Plan and Design Criteria;

C.a perpetual non-exclusive, underground and surface utility easement within the Common Areas to the City of Albuquerque and other public and private utility companies, Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees for the purpose of placing, relocating, connecting and maintaining lines for gas lines, electric, communication, cable, drainage, water, and sanitary sewer along with other pipe conduits as well as meters, pedestals, transformers and other surface equipment to the extent it cannot be located underground; provided, however, utilities shall not be located so as to impact the location of the Building on any Lot;

D.a perpetual, non-exclusive access and maintenance easement for the Shared Project Signage is granted in the areas where Shared Project Signage may exist from time-to-time for purpose in installing, removing, repairing and maintaining the signage structure, sign panels and other signage improvements for the Shared Project Signage to Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees; and

E.a perpetual, non-exclusive reciprocal parking easement for vehicles and bicycles is granted to Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees within the parking area portions of the Common Areas on each Lot as the same may exist from time to time. Subject to the approval of the Developer, the Owner may designate a limited number of parking spaces on their Lot as short-term exclusive use; and

F.A perpetual non-exclusive easement for the construction (including staging), maintenance, repairs and replacements of the Individual Lot Improvements, improvements on Common Areas, and Shared Project Signage to the Developer by each Owner over, upon, under and across their respective Lots.

Section 4.2 Limitations on Use of the Common Areas.

A. The Common Areas are hereby reserved for the sole and exclusive use of the Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees. The Common Areas may be used for the purposes set forth herein and for no other purpose unless otherwise specifically agreed to by the Developer. All Improvements placed or constructed in the Common Areas shall be approved by the ARC and shall be in accordance with the Project Development Plan and Design Criteria, if any. The Common Areas shall be kept, repaired, replaced and maintained as provided for in Article V. All portions of a Lot which are not used for Buildings, and are not Shared Project Signage shall be developed as Common Areas by the Owner of the Lot, at that Owner's sole cost and expense, in accordance with the Project Development Plan and Design Criteria. No changes to the Common Areas Improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, walls, fences and landscaped areas may be made without the prior written approval of the ARC.

B. Customers and invitees of businesses in the Project shall not be permitted to park on the Common Areas except while shopping or transacting business in the Project.

C. The alteration in the natural water flow which may occur on a Lot as a natural consequence of normal construction activities and the existence of the Improvements substantially as shown on the Project Development Plan and Design Criteria (including, without limitation, Buildings and Building expansions, curbs, drives and paving) shall be permitted, provided that such diversion of water flows does not interfere with the use and beneficial enjoyment of any of the other Lots.

D. No walls, fences or barriers of any kind shall be constructed or maintained within the Common Areas, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including, without limitation, of pedestrians and vehicular traffic between the various Lots; except in the event of a bona fide emergency.

E. Subject to Article X, no portion of the Common Areas shall be used for outdoor sales, construction staging, signage (other than as contained on Developer designated signs or storefronts), including without limitation, flags, A-frame signage, sandwich boards, banners, and/or billboards without the written approval of the ARC.

ARTICLE V MAINTENANCE/INSURANCE/TAXES

Section 5.1 Common Area Maintenance Responsibilities. Each Owner, at its sole cost and expense, shall be responsible for the continued upkeep and maintenance, including repair and replacements, of Improvements on their respective Lots.

Section 5.2 Insurance on Lot. Each Owner shall be responsible for providing and maintaining commercial general liability insurance with broad form coverage endorsement (including broad form Project damage endorsement) insuring itself and the Developer against claims for personal injury, bodily injury or death, and Project damage or destruction, occurring in, on or about the Lot, including all Common Areas within said Lot. Such insurance shall be written with an insurer licensed to do business in New Mexico and the Developer shall be named on the policy as an additional insured. The limits of liability of all such insurance shall be not less than \$2,000,000.00 for personal injury or bodily injury or death of any one person, \$2,000,000.00 for personal injury or bodily injury or death of more than one person in one occurrence and \$2,000,000.00 with respect to damage to or destruction of Project; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and Project damage or destruction) with a limit of not less than \$2,000,000.00 per occurrence. The Developer may increase the limits of such insurance as reasonably necessary to reflect then appropriate limits for such insurance, taking into consideration such things as changes in the Consumer Price Index, or similar index. The Owners shall furnish the Developer, upon request, but no more often than once annually, with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or nonrenewed without the giving of thirty (30) days' prior written notice to the holders of such insurance and the holders of such certificates. An Owner or Occupant with a net worth of at least One Hundred Million Dollars (\$100,000,000.00) (as determined by generally accepted accounting principles, consistently applied), may

elect to (i) self-insure to provide any coverage(s) require hereunder or (ii) retain the financial risk for any claim that would otherwise fall under the coverage(s) required under this section.

Section 5.3 **Enforcement.** If any Owner or Occupant has failed in any of the foregoing duties or responsibilities, then the Developer may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care, repair, replacement, maintenance or obtain the insurance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Developer, through its authorized agents, shall have the right and power to enter onto the Lot of the offending Owner or Occupant and perform such care, repair, replacement and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person or entity or acquire insurance in compliance with Section 5.2. The Owners and Occupants for which such work is performed or insurance is obtained shall, jointly and severally, be liable for the cost of such work or policy, plus an additional twenty percent (20%) of such costs and shall promptly reimburse the Developer, as applicable, therefor. If such Owner or Occupant shall fail to reimburse the Developer within thirty (30) days after receipt of a statement for such work from the Developer, then said indebtedness shall be a debt of all of said Owners and Occupants, jointly and severally, and shall constitute a lien against the Lot on which said work was performed or insurance was obtained. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Article VI and the Developer shall have identical powers and rights in all respects including but not limited to the right to pursue foreclosure of the lien.

Section 5.4 **Taxes and Governmental Assessments.** The Owners shall pay prior to delinquency all taxes and governmental assessments levied or assessed against their respective Lots. The Owners shall each have the right to contest the amount or validity of all or any part of the taxes and assessments which said Owners are required to pay.

ARTICLE VI REPAIR ASSESSMENT

Section 6.1 **Repair Assessment.** If, in the process of construction upon any Lot or other portion of the Project, or in making any Improvement, or through negligence or intentional misconduct, the Owner or Occupant, their employees, agents or independent contractors cause damage to any other Lot, Improvement, Common Areas, public rights-of-way or to any other property owned by someone else within the Project, the Owner shall be responsible for such damage. If the Developer, either voluntarily or involuntarily, makes repairs or otherwise cures the damage caused by the Owner, its employees, agents or independent contractors, the Owner shall be obligated to reimburse the Developer for all expenses the Developer incurred in curing the damage plus a twenty percent (20%) administrative fee to cover Developer costs associated with such repairs. Such amount shall be treated as a special assessment and the Developer shall have all rights and powers as provided in this Article. Repair Assessments shall be due within ten (10) days after receipt of written notice from Developer setting forth the nature of the work necessitating the Repair Assessment and the amount of the Repair Assessment.

Section 6.2 **Effect of Non-Payment of Assessment - the Lien, the Personal**

Obligation, Remedies of the Developer. The lien of the Developer upon a Lot for assessments shall be effective from and after recording, in the public records of Sandoval County, New Mexico, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner and the amount and date when due. Such claim of lien shall include not only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, but such claim of lien shall also include such additional assessments which accrue from the first non-payment to which the claim of lien relates to the entry of a judgment in favor of the Developer with respect to such lien. Such claims of lien shall be signed and verified by an officer or agent of the Developer. Upon full payment of all sums accrued by such claim of lien, the same shall be satisfied of record. If the assessment is not paid within fifteen (15) days after the delinquency date, which shall be set by the Developer, the assessment shall bear a late charge to be fixed by the Developer and thirty (30) days following the delinquency date the delinquent assessment shall bear interest from the date due at the rate of fifteen percent (15%) per annum. Any time an assessment remains delinquent for thirty (30) or more days, the Developer may bring an action to foreclose the lien against the Lot(s) in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action including reasonable attorney's fees, and, in the event a judgment is obtained, such judgment shall include late charges and interest on the assessment as above provided and reasonable attorney's fees to be fixed by the Court, together with the cost of the action.

Section 6.3 Subordination to Lien of Mortgages. The lien for the assessments for which provision is herein made, as well as in any other Article of this Declaration, shall be subordinate to the lien of any first mortgage to a federal or state-chartered bank, life insurance company, federal or state savings and loan association, real estate investment trust, retirement fund or institutional mortgage company. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure of such mortgage or a deed or other transfer in lieu of foreclosure. No sale or transfer shall relieve any Lot from liability for any assessment thereafter becoming due nor from the lien of any such subsequent assessment. The written opinion of either the Developer that the lien is subordinate to a mortgage shall be dispositive of any questions of subordination.

Section 6.4 Exempt Property. The Developer shall have the right to exempt any Lot, but only an entire Lot from the assessments, charges and liens described herein provided that such part of the Project exempted is used (and as long as it is used) for any of the following purposes:

- A. As an easement or other interest therein dedicated to and accepted by the local public authority and devoted to public use.
- B. As property exempted from ad valorem taxation by the laws of the State of New Mexico.

Notwithstanding any provisions herein, no developed Lot devoted to industrial, office, or commercial use shall be exempt from said assessments, charges or liens.

ARTICLE VII INDEMNIFICATION/WAIVER OF SUBROGATION

Section 7.1 Indemnification. Each Owner hereby agrees to indemnify and save the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments of third parties arising from personal injury, death or property damage and occurring on or from its Lot, except to the extent proximately caused, in whole or in part, by the act or omission of the party claiming indemnification hereunder.

Section 7.2 Waiver of Subrogation. Neither the Developer nor the other Owners, their successors and assigns shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any Improvement or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefitting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Declaration. The Developer and the other Owners, their successors and assigns shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

Section 7.3 Limitation on Indemnities. To the extent, if at all, §56-7-1 N.M.S.A. 1978 is applicable to this Declaration, no indemnity obligation provided in this Declaration will extend to any liability, claims, damages, losses or expenses, including attorney's fees relating to the construction, installation, alteration, modification, repair, maintenance, servicing, demolition, excavation, drilling, reworking, grading, paving, clearing, site preparation or development of any real property or of any improvement on, above or under real property and arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by the indemnitee, or the agents or employees of the indemnitee, or (ii) the giving or the failure to give directions or instructions by the indemnitee, or the agents or the employees of the indemnitee where the giving or failure to give directions or instructions is the primary cause of bodily injury to Persons or damage to property.

ARTICLE VIII EMINENT DOMAIN AND CASUALTY

Section 8.1 Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain, condemnation or transfer in lieu thereof affecting said other Lot Owner's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain, condemnation or transfer in lieu thereof of any part of the Common Areas, the award attributable to the Project and Improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

Section 8.2 Collateral Claims. All Owners other than the Owner of the Lot taken by the exercise of eminent domain, condemnation or transfer in lieu thereof may file collateral

claims with the condemning authority for their losses which are separate and apart from the value of the Project and Improvements taken from the Owner of said Lot.

Section 8.3 Casualty. In the event all or any portion of any Building or the Improvements in the Project is damaged or destroyed by fire or other casualty, or is taken or damaged as a result of the exercise of the power of eminent domain, condemnation or any transfer in lieu thereof, the Lot Owner or Occupant shall: (A) promptly restore or cause to be restored (i) the remaining portion of the Improvements as nearly as practicable to the condition of the same immediately prior to such casualty or eminent domain, condemnation or transfer in lieu thereof, and (ii) the remaining portion of such Building; or (B) in lieu thereof, shall remove or cause to be removed the damaged portion of such Building and/or such Improvements together with all rubble and debris related thereto. All portions of the Lot on which Buildings are not reconstructed following a casualty or eminent domain, condemnation or transfer in lieu thereof shall be graded or caused to be graded by the Owner of said Lot through the Developer to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Project or any portion thereof shall be covered by a one inch asphalt dust cap, crushed granite, neatly maintained lawn, or other means of dust/weed control as agreed to by the ARC.

ARTICLE IX USE AND RESTRICTIONS

A. Prohibited Uses. Reserved

ARTICLE X DEVELOPER'S RESERVED RIGHTS TO PROJECT

Section 10.1 Extension of ECR to Include Additional Property. The Developer may at any time make other properties now or hereafter owned by Developer subject to this ECR by executing an instrument in writing applying this ECR to such other properties and by recording the instrument in the public records of Bernalillo County, New Mexico.

Section 10.2 Grant of Easement. The Developer, through their duly authorized employees and contractors, shall have the right and easement, to enter onto a Lot and/or the Common Areas, including Improvements, at any reasonable time to perform such inspection and/or maintenance as may be authorized in this Declaration.

Section 10.3 Enforcement. Developer shall have the right to take such steps as it deems necessary to prevent those persons not authorized to use the Common Areas from using the Common Areas for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Project except along the common boundary line of any Lot with any other Lot.

Section 10.4 Withdrawal of Property. Developer may, but shall have no obligation to, withdraw at any time or from time to time portions of the Project, provided only that the withdrawal of said portions shall not, materially increase the pro rata share of expenses payable by the Owners remaining subject hereto after such withdrawal or adversely affect access to the

remainder of the Project. The withdrawal of said portions of the Project as aforesaid shall be made and evidenced, by filing in the public records of Bernalillo County, New Mexico, a supplementary Declaration executed by the Developer alone, with respect to the portions of the Project to be withdrawn.

Section 10.5 Platting and Subdivision Restrictions. Developer shall be entitled at any time and from time to time to plat, vacate and/or replat all or any part of the Project and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Project, without the consent of the ARC or, the Owners or any mortgagee of the Project. If required, Owner and/or its successors or assigns or any mortgagee of the Project shall execute such approvals as are required by the municipality governing such platting and subdivision.

Section 10.6 Continued Development. Developer shall be entitled at any time and from time to time to further develop the Project and to obtain and record such governmental or quasi-governmental approval as may be necessary to effectuate such development, without the consent of the ARC or the Owners or any mortgagee of the Project. Each Owner and/or its successors or assigns will cooperate fully and promptly with Developer, its successors and/or assigns to enable Developer, its successors and/or assigns to develop the remaining portion of the Project, at no cost or expense to such cooperating Owner or Occupant. Such cooperation shall include Owner and/or its successors or assigns or any mortgagee of the Project executing such approvals as are required by the governmental and/or quasi-governmental body governing the development.

Section 10.7 Public Roads - Easements. The Developer reserves the right from time to time hereafter to delineate, plat, grant or reserve within portions of the Project not previously conveyed or hereby granted, such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Project (and from time to time to change the location of the same) free and clear of this ECR and to dedicate the same to public use or to grant the same to any governing municipal or regulatory authority, including any appropriate public utility corporations.

ARTICLE XI CONSTRUCTION RULES

Section 11.1 Contractors.

A. All contractor(s) shall be properly licensed to perform the construction activity being undertaken by or on behalf of Owner.

ARTICLE XII MISCELLANEOUS

Section 12.1 Owners' Easements of Enjoyment. Every Owner shall have a reciprocal right of easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title of all portions of the Project, subject to the following:

A. All provisions of this Declaration and the plats of all or any part of the

Project.

B. Rules and regulations governing use and enjoyment of the Common Areas adopted by the Developer.

C. Restrictions filed separately in the records of Bernalillo County, New Mexico with respect to all or any part of the Project.

Section 12.2 Allowed Operations and Uses. All of the Lots are intended to be used for commercial, office and/or industrial uses, in compliance with all ordinances of the City of Albuquerque and the Project Development Plan and Design Criteria. Any other uses must be approved by Developer and be in compliance with all ordinances of the City of Albuquerque, title matters of record, and the Project Development Plan and Design Criteria.

Section 12.3 Nuisance. Unless otherwise specifically prohibited by the City of Albuquerque, title matters of record, the Project Development Plan and Design Criteria or this Declaration, any operation and use will be permitted if it is performed or carried out entirely within a Building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to adjacent Lots such as, but not limited to, vibration, sound, electro-mechanical disturbance, radiation, discharge of waste materials, electromagnetic disturbance, air or water pollution, dust pollution or the emission of odorous, toxic or non-toxic matter. Further, no noxious or offensive trade, service or activity such as night clubs or strip clubs shall be permitted within the Project.

Section 12.4 Delegation of Use. Subject to such limitations as may be imposed by this Declaration, or rules and regulations imposed by the Developer, each Owner may delegate the right of enjoyment in and to the Common Areas to its Occupants and invitees.

Section 12.5 Further Subdivision. Except as provided in Section 10.5, no further subdivision or vacation of a subdivision of the Project shall be allowed unless approved by the ARC and the City of Albuquerque.

Section 12.6 No Partition. There shall be no judicial partition of the Common Areas, nor shall Developer, any Owner and any other person acquiring any interest in the Project or any part thereof, seek judicial partition thereof.

Section 12.7 Term. This Declaration, every provision hereof, and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of twenty (20) years from the recording hereof in the public records of Bernalillo County, New Mexico, and shall thereafter be renewed automatically for successive ten (10) year periods unless and until terminated as provided in Section 12.8 below.

Section 12.8 Termination and Modification. This Declaration may only be terminated by the unanimous written consent of the Developer and all Owners of the Project. Developer shall have the right to amend or modify this Declaration without the approval of the ARC or any Owner; provided, however, any amendment or modification that seeks to have any Lot's parking ratios reduced, a Lot's utility services reduced, the drainage plan affecting a Lot affected to its material detriment, a Lot's access points or driveways materially changed, or the

use materially changed, the written consent of any applicable Owner affected thereby must be obtained.

Section 12.9 Assignment of Developer's Rights and Duties. Any and all of the rights, powers and reservations of the Developer herein contained may be assigned to any person or entity, which person or entity will assume the duties of the Developer pertaining to the particular rights, powers and reservations assigned, and upon any such person or entity evidencing its consent in writing to accept such assignment and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Developer herein. If at any time the Developer ceases to exist without making such an assignment, the Lot 1A Owner shall assume the rights, powers and reservations of the Developer. The Developer may from time to time delegate any or all of its rights, powers, discretion and duties hereunder to such agents as it may nominate. The Developer may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements and estates reserved to it by this Declaration to any one or more persons or entities, that will accept the same. Any such assignment shall be in writing and recorded in the public records of Bernalillo County, New Mexico and the assignee shall join therein for the purpose of evidencing its acceptance of the same. Such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to the Developer and the Developer shall automatically be released from such responsibility.

Section 12.10 Mutuality and Reciprocity - Runs With Land. All covenants, restrictions, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Lot and other Project in favor of every other Lot and other Project, shall create reciprocal rights and obligations between all grantees of each Lot and other Project, their heirs, successors, personal representatives and assigns, and shall, as to said grantees, their heirs, successors, personal representatives and assigns, operate as covenants running with the land for the benefit of all other Lots and other Project.

Section 12.11 Benefits and Burdens. The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Developer, the Owners of all Lots, and the grantees of additional land made subject to this Declaration and their respective heirs, successors, personal representatives and assigns.

Section 12.12 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties hereto that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Areas of a Lot, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the Owner and the Developer. Notwithstanding any other provisions herein to the contrary, Developer or the Owner(s) of the Lot(s) affected hereby may periodically restrict ingress and egress to and from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to

prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the Owners and Occupants, and to the extent it is done by Owners shall be approved by the ARC.

Section 12.13 Notices. Any notice required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for an Owner: (A) if the Lot is improved, to the address set forth in the tax rolls; (B) if the Lot is not improved, to the address set forth in the deed; or (C) if none of the foregoing, to the last known address of the Owner; and if intended for Developer, to the following address:

CDR Holding LLC
3554 White Horse Dr SE
Rio Rancho, NM 87124
505.264.0510

The address of the Developer may be changed from time to time by recording a change of address in the county land records specifically referencing this recorded Declaration by book and page.

Section 12.14 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine or feminine, as the context requires.

Section 12.15 Failure to Enforce Not a Waiver of Rights. Any waiver or failure to enforce any provision of this Declaration in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in the Project or of any other provision of this Declaration. The failure of Developer or any Owner to enforce any provision of the Declaration shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision of the Declaration.

Section 12.16 Condominium. This Declaration shall not be construed to limit or prevent a Lot or other Project and the Improvements thereon from being submitted to a plan of condominium ownership, and particularly the recordation of a plan of condominium ownership for any Lot or other Project shall not be construed as constituting a subdivision of the Lot or other Project.

Section 12.17 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project has and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein.

Section 12.18 Severability. All of the conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time

be held that any one of said conditions, covenants, restrictions or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations nor any part thereof shall be thereby affected or impaired.

Section 12.19 **Captions.** The captions, section numbers and article numbers appearing in this Declaration are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of the Declaration nor in any way modify or affect this Declaration.

Section 12.20 **Limitation of Developer Liability.** The total liability of Developer for any default and any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Declaration from any cause or causes including but not limited to Developer's negligence, errors, omissions, strict liability, breach of contract or breach of warranty by Developer under the terms of this Declaration shall be limited to the interest of Developer in the Project, and Developer shall not be liable for any deficiency.

IN WITNESS WHEREOF, the Developer has executed this Declaration effective the date first hereinabove set forth.

[signature on separate page]

CDR Holding LLC,
A New Mexico limited liability company

By: _____

Charles Nguyen, Member

STATE OF NEW MEXICO)

)

COUNTY OF Sandoval ~~BERNALILLO~~)

This instrument was acknowledged before me on May 19, 2025, by Charles Nguyen, Member of Manager of CDR Holding LLC, a New Mexico limited liability company on behalf of said company.

NOTARY PUBLIC

STATE OF NEW MEXICO
NOTARY PUBLIC
SHANNON MARTINEZ
COMMISSION #1093772
COMMISSION EXPIRES 06/24/2025

EXHIBIT A

LEGAL DESCRIPTION OF LOT 13-A

Tract numbered/lettered Thirteen-A (13-A) of the Bulk Land Plat of Tracts 13-A, 13-B and 13-C, BLACK RANCH, (being a Replat of Tract 13, Black Ranch) within the Town of Alameda Grant in projected Section 8, Township 11 North, Range 3 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on said plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on December 29, 2004, in Plat Book 2004C, page 400.

EXHIBIT B

LEGAL DESCRIPTION OF LOT 1A

Lot numbered One-A (1A) of the Northeast Portion of Black Ranch, Bernalillo County, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 5, 1995, in Plat Book 95C. Page 164.