


ADMINISTRATION MEMORANDUM
15-20

DATE: July 6, 2015

TO: Honorable Mayor Joyce Downing and City Council members

FROM: John Pick, City Manager 

SUBJECT: Construction Defects: Local Solutions

RECOMMENDATION:

I recommend that the Council give consideration to adopting a Construction Defects Ordinance to encourage the construction of condominiums and townhouses.

BACKGROUND:

Over the past few years, concerns throughout the State have grown about the effect that the State's construction defects statute has on the building of condominiums. Recent statistics indicate that the per cent of total housing starts represented by multi-family, owner-occupied units has decreased from 25% to 4%. Affordable housing advocates are concerned with this trend because in many ways condominiums and owner-occupied townhouses are often more affordable than single family homes. This is the case because often these units are smaller and builders can realize efficiencies and economies of scale in their construction.

The State's existing construction defects law is seen as an impediment to the construction of these types of units because it makes it fairly easy for lawsuits to be brought against the builder by a homeowner's association (HOA) because to do so only requires a majority vote of the board of the HOA. HOA boards, depending on the language in the Declaration applicable to the particular project, may also have the ability to remove clauses in their contracts that require that disputes go to mediation or binding arbitration rather than to court. This added risk increases insurance costs for the builders and decreases their motivation to build condominiums. The added insurance costs can also eliminate the profit margin that builders would realize by building affordable units, further reducing their motivation to build these types of units.

In each of the past three legislative sessions, bills have been introduced to reform the construction defects law but each time proponents have been unsuccessful in seeing their bills pass. As a result of this experience, local governments have begun to look at adopting local ordinances to spur the building of condominiums in their jurisdictions and several have adopted such ordinances, including Lakewood, Littleton, Parker and Lone Tree. These ordinances seek to address this issue in one of two ways: a number take the approach of adopting an ordinance that would apply to all newly constructed projects city-wide, while others take a project-by-project approach through adding notes to the plats of projects as they are approved. The changes incorporated into the ordinances that apply city-wide typically provide for: giving the builder a "right to repair" whatever defects are brought to light before a lawsuit can be filed; and, requiring a vote of the majority of members of a homeowners' association to bring suit against a builder. In the case of the Town of Parker by way of example, the Town adopted an ordinance that requires a "plat-note" providing that claims are to be submitted to binding arbitration. The City of Northglenn may want to consider adoption of an ordinance that takes one of these

approaches to facilitate the completion of the pavilions development on Claude Court and in the event that other condominium projects are considered in the future.

Attached are copies of ordinances from Lakewood, Littleton, Parker and Lone Tree for your perusal.

BUDGET/TIME IMPLICATIONS:

There are no budget or time implications involved with this matter.

STAFF REFERENCE:

If you have any comments or questions, please contact John Pick at jpick@northglenn.org or at 303-450-8706.

O-2014-21

AN ORDINANCE

ADDING A NEW CHAPTER 26 TO ARTICLE 14 OF THE LAKEWOOD MUNICIPAL CODE CONCERNING REPAIR OF CONSTRUCTION DEFECTS

WHEREAS, the City of Lakewood is a home rule municipal corporation organized pursuant to Article 20 of the Colorado Constitution and the Charter of the City of Lakewood; and

WHEREAS, by virtue of Article 20 of the Colorado Constitution, and as further authorized by state law, including but not limited to, Sections 31-15-401 and 31-23-301 of the Colorado Revised Statutes, the City of Lakewood has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the citizenry; and

WHEREAS, land use, planning and general business regulation are well-established as matters of purely local concern, and therefore subject to regulation by home rule cities; and

WHEREAS, the City's zoning ordinance and Comprehensive Plan both contemplate a diverse housing stock, consisting of a mix of single-family and multi-family developments, and both owned and rented units, designed to serve the needs of all Lakewood residents; and

WHEREAS, the advent of light rail service via the W Rail Line has intensified the need for owner-occupied units, particularly in transit-oriented zones around light rail stations; and

WHEREAS, despite a genuine demand for such housing options, statistics show that almost no owner-occupied multi-family developments, or condominiums, are being developed in and around Lakewood; and

WHEREAS, the general consensus is that the paucity of condominiums available for sale in Lakewood is the result of a litigation climate that puts builders and developers at risk of substantial judgments, often including punitive damages, for alleged construction defects; and

WHEREAS, that risk of exposure to large damage awards has led insurance companies who would normally insure development projects to stop writing policies for owner-occupied multi-family projects; and

WHEREAS, the City Council finds that the health, safety and welfare of Lakewood residents is being negatively impacted by the lack of housing options; and

WHEREAS, the City Council further finds that while the scarcity of new condominium projects is not unique to the City of Lakewood, the City nevertheless experiences some unique impacts because of its proximity to the light rail line and the graying of its population, among other factors; and

WHEREAS, the City Council therefore desires to take reasonable steps within its power as a home rule city to encourage the development of owner-occupied multi-family residential projects through the adoption of regulations designed to reduce the risk and exposure to builders and developers of such projects, while still protecting home-owners from legitimate construction defect claims.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood:

SECTION 1. The foregoing recitals are incorporated into and made part of this Ordinance.

SECTION 2. Title 14 of the Lakewood Municipal Code is hereby amended by the addition of a new Chapter 14.26, to read in full as follows:

Chapter 14.26

REPAIR OF CONSTRUCTION DEFECTS

14.26.010 Purposes and Applicability.

A. The purposes of this Ordinance are to:

1. encourage the construction of owner-occupied multi-family developments in Lakewood;
2. facilitate the implementation of Lakewood's Comprehensive Plan and Zoning Ordinance, both of which contemplate owner-occupied multi-family developments in transit-oriented areas and throughout the City;
3. reassure homeowners that most, if not all, construction defects will be promptly investigated and repaired by builders;
4. motivate all parties to resolve disputes involving construction defects quickly and without the need for expensive and time-consuming litigation; and

5. provide homeowners in communities with homeowners associations with an enhanced opportunity to participate in the governance of their community by empowering individual owners to give or withhold their informed consent with respect to actions the board of the homeowners association may desire to pursue regarding construction defects.

B. Applicability.

This ordinance shall apply only to new construction commenced after the effective date of the ordinance.

14.26.020 Definitions

Builder means any entity or individual, including but not limited to a builder, developer, general contractor, contractor, subcontractor, architect, engineer or original seller who performs or furnishes the design, supervision, inspection, construction or observation of any improvement to real property that is intended to be occupied as a dwelling or to provide access or amenities to such an improvement.

Construction Defect means any instance in which a structure or portion thereof does not conform in all material respects to the applicable section(s) of the Building Code, or does not conform to the manufacturer's specifications if those specifications are more strict than the applicable provisions of the Building Code.

Homeowner means any person who owns a unit in a condominium or planned community, but shall not include any declarant or any person having an interest in a unit solely as security for an obligation. As used in this Chapter, Declarant shall have the meaning set forth in C.R.S. § 38-33.3-103(12).

14.26.030 Potential Claimants

Original buyers or subsequent buyers of an attached single-family dwelling or a unit in a multi-family building, or the governing homeowners association may send the notice of Construction Defect, provided the notice is sent within the applicable time period.

14.26.040 Potential Respondents

Any person or entity within the definition of a "Builder" as defined in Section 14.26.020 of this Ordinance is subject to the requirements of this Ordinance.

14.26.050 Claimant's Notice to Builder of Construction Defects; Builder's Acknowledgement; Inspection

- A. Claimant's Notice. Upon the discovery of any alleged Construction Defect, a claimant must provide written notice via certified mail or personal delivery to the party alleged to have caused or contributed to the defect, in the manner

prescribed in this Section, of the claimant's claim that one or more Construction Defects exists in his/her residence or, with respect to any homeowners association, that one or more Construction Defects exists in any residence or in any common areas or facilities.

The notice must:

1. Provide the claimant's name, address and preferred method of contact;
2. State that the claimant alleges a Construction Defect pursuant to this Chapter against the Builder; and
3. Describe the claim in reasonable detail sufficient to determine the nature and location of the alleged Construction Defects.

B. Builder's Responsibilities. After receiving notice of a potential Construction Defects claim, a Builder must do each of the following:

1. Acknowledge Claim in Writing.
 - a. A Builder who receives a notice under this Chapter shall acknowledge receipt of the notice, in writing, within 14 days after receipt. The notice shall be sent to the claimant and to any attorney the Builder knows to be representing the claimant in connection with the notice. If the Builder has retained legal counsel, said counsel shall thereafter communicate with the claimant's legal representative, if any.
 - b. If the Builder fails to acknowledge receipt of a notice within the time specified, this Chapter shall not apply and the claimant shall be released from the requirements of this Chapter and may proceed with the filing of an action against the Builder.
2. Maintain an agent for notice with the Secretary of State; and
3. If specifically asked to do so by the claimant and within 14 days of such a request, provide the claimant or his/her legal representative with:
 - a. copies of all relevant plans, specifications, grading plans, soils reports and available engineering calculations pertaining to the claimant's residence;
 - b. all maintenance and preventative maintenance recommendations pertaining to the claimant's residence; and
 - c. limited contractual warranty information.
4. A Builder responding to a Claimant's request for documents may charge reasonable copying costs and may require the copies of the documents to be made onsite.
5. Builder's Election to Inspect Property. In addition to the requirements set forth in this Section, if the Builder elects to inspect the claimed Construction Defect, the Builder shall complete the initial inspection and testing, if any, within 14 days after the Builder acknowledged receipt of the notice, and at a mutually agreeable date and time. The Builder shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Before entering onto the premises for the inspection, the Builder shall supply the claimant with proof of liability insurance coverage. The Builder

shall, upon request, allow the inspection to be observed and recorded or photographed. Nothing that occurs during a Builder's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by any potential party in subsequent litigation.

6. A Builder who fails to comply with any of the foregoing requirements within the time specified is not entitled to the protection of this Chapter, and the homeowner is released from the requirements of this Chapter and may proceed with the filing of an action.
7. If a notice is sent to the builder in accordance with 14-26-050 within the time prescribed for the filing of an action under any applicable statute of limitations or repose, then the statute of limitations or repose is tolled until sixty days after the completion of the notice process described in section 14-26-050. If the builder elects to repair pursuant to 14-26-060, then the statute of limitations or repose is tolled until sixty days after the completion of repairs.

14.26.060 Builder's Right to Repair

- A. Within thirty (30) days of the initial inspection or testing, the Builder may elect to repair the Construction Defect. If the Builder elects to repair the Construction defects, it has the right to do so and the Claimant may not, directly or indirectly, impair, impede or prohibit the Builder from making repairs. Any notice to repair shall offer to compensate the claimant for all applicable damages within the timeframe set for repair. Any notice of repair shall be accompanied by a detailed, step-by-step explanation of the particular defect being repaired and setting forth a reasonable completion date for the repair work. The notice shall also include the contact information for any contractors the Builder intends to employ for the repairs.
- B. Claimant shall promptly cooperate with Builder to schedule repair work by Builder.
- C. Within ten (10) days after receipt of the builder's notice to repair, a claimant may deliver to the builder a written objection to the proposed repair if the claimant believes in good faith that the proposed repairs will not remedy the alleged defect. The builder may elect to modify the proposal in accordance with the claimant's objection, or may proceed with the scope of work set forth in the original proposal.
- D. Builder's Failure to Comply. If the Builder fails to send a notice to repair or otherwise strictly comply with this Chapter within the specified time frames, or if the Builder does not complete the repairs within the time set forth in the notice to repair, the claimant shall be released from the requirements of this Chapter and may proceed with the filing of an action against the Builder. Notwithstanding the foregoing, if the Builder notifies the claimant in writing at least 5 days before the

stated completion date that the repair work will not be completed by the completion date, the Builder shall be entitled to one reasonable extension of the completion date, not to exceed ten days.

- E. Completion of repairs. The Builder shall notify the claimant when repairs have been completed. The claimant shall have ten days following the completion date to have the premises inspected to verify that the repairs are complete and satisfactorily resolved the alleged defects. A claimant who believes in good faith that the repairs made do not resolve the defects may proceed with the notice required by 14.26.100.

14.26.070 Warranty of Repairs

The repair work performed by the Builder shall be warranted against material defects in design or construction for a period of 2 years, which warranty shall be in addition to any express warranties on the original work.

14.26.080 Subsequently Discovered Defects

Any alleged Construction Defect discovered after repairs have been completed shall be subject to the same requirements of this Chapter if the Builder did not have notice or an opportunity to repair the particular defect.

14.26.090 Alternative Dispute Resolution Provisions

If a provision found in the declaration, bylaws or rules and regulations of a common interest community requires that Construction Defect claims be submitted to mediation or arbitration, that requirement constitutes a commitment on the part of the unit owners and the association upon which a developer, contractor, architect, builder or other person involved in the construction of the community is entitled to rely. Consequently, a subsequent amendment to the declaration, bylaws or rules and regulations that removes or amends the mediation or arbitration requirement shall not be effective with regard to any Construction Defect claim that is based on an alleged act or omission that predates that amendment.

14.26.100 Informed Consent of Homeowners

Homeowners are entitled to be kept informed by boards of homeowners associations of the board's consideration of actions regarding Construction Defects and to have meaningful input and a right to make a considered judgment and give (or withhold) informed consent. Accordingly, if a board of an association considers or intends to institute an action asserting one or more Construction Defects, the board must do each of the following:

- A. At least sixty (60) days before filing any action under Section 13-20-803.5, C.R.S., the claimant must mail or deliver written notice to each Homeowner at the Homeowner's last known address.
- B. The notice must be signed by a person other than, and not employed or otherwise affiliated with, the attorney or law firm that represents or will represent the association in the construction defects claim.
- C. The notice required by this section must contain the following information:
- i. The nature of the action and the relief sought;
 - ii. The amount of expenses and fees the board anticipates will be incurred, directly or indirectly, in prosecuting the action. Attorney's fees, consultant fees, expert witness fees and court costs, whether incurred by the association directly or for which it may be liable if it is not the prevailing party or if it does not proceed with the action;
 - iii. The estimated cost of repairing the defect, or if the defect is not repaired, the estimated reduction in value of the unit;
 - iv. The estimated impact on the marketability of units that are not the subject of the action, including any impact on the ability of the owners to refinance their property during and after the action;
 - v. The manner in which the association proposes to fund the cost of the action, including any proposed special assessments or the use of any revenues; and
 - vi. The anticipated duration of the action and the likelihood of success.
 - vii. Whether the Builder has offered to make any repairs and, if so, whether the Builder has made repairs.
 - viii. The steps taken by the builder in accordance with this Chapter to address the alleged defect, including any acknowledgement, inspection, election to repair or repairs.
- D. The association may not commence the action unless the Board obtains the written consent of Homeowners holding at least a majority of the total voting rights in the association after giving the notice required by this Section. Homeowners may vote either directly or through a proxy directed in writing by the Homeowner and confirmed in writing by the proxy. Such consent must be obtained within 60 days after such notice is provided, otherwise the owners shall be deemed to have declined to provide their informed consent to such action.

SECTION 3. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 22nd day of September, 2014; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 25th day of September, 2014; set for

public hearing on the 13th day of October, 2014, read, finally passed and adopted by the City Council on the _____ day of October, 2014 and, signed and approved by the Mayor on the _____ day of October, 2014.

Bob Murphy, Mayor

ATTEST:

Margy Greer, City Clerk

APPROVED AS TO FORM:

Tim Cox, City Attorney

1 CITY OF LITTLETON, COLORADO

2
3 ORDINANCE NO. 25

4
5 Series, 2015

6
7 INTRODUCED BY COUNCILMEMBERS: BRINKMAN & COLE

8
9 AN ORDINANCE OF THE CITY OF LITTLETON,
10 COLORADO, ADDING A NEW CHAPTER 7 TO TITLE 4
11 OF THE LITTLETON CITY CODE CONCERNING REPAIR
12 OF CONSTRUCTION DEFECTS

13
14 WHEREAS, the City of Littleton is a home rule municipality organized pursuant
15 to Article 20 of the Colorado Constitution and the Charter of the City of Littleton;

16
17 WHEREAS, by virtue of Article 20 of the Colorado Constitution, and as further
18 authorized by state law, including but not limited to, Sections 31-15-401 and 31-23-301 of the
19 Colorado Revised Statutes, the City of Littleton has broad authority to exercise its police powers
20 to promote and protect the health, safety and welfare of the citizenry;

21
22 WHEREAS, land use, planning, general business regulation and adoption,
23 implementation and enforcement of building codes are well-established as matters of purely local
24 concern, and therefore subject to regulation by home rule municipalities;

25
26 WHEREAS, the city's zoning ordinance and comprehensive plan both
27 contemplate a diverse housing stock, consisting of a mix of single-family and multifamily
28 developments, and both owned and rented units, designed to serve the needs of all Littleton
29 residents;

30
31 WHEREAS, the advent of light rail service via the Southwest Rail Line has
32 intensified the need for owner-occupied units, particularly in transit oriented zones around light
33 rail stations;

34
35 WHEREAS, despite a genuine demand for such housing options, statistics show
36 that almost no owner-occupied multi-family developments, or condominiums, are being
37 developed in Littleton;

38
39 WHEREAS, the general consensus is that the scarcity of condominiums available
40 for sale in Littleton is the result of a litigation climate that puts builders and developers at risk of
41 substantial judgments, often including punitive damages, for alleged construction defects;

42
43 WHEREAS, that risk of exposure to large damage awards has led insurance
44 companies who would normally insure development projects to stop writing policies for owner-
45 occupied multi-family projects;

46
47 WHEREAS, construction defects claims frequently allege that such defects are
48 violations of applicable building codes and, if violations of applicable building codes do exist,
49 they are frequently not remedied for many months or years;

1
2 **WHEREAS**, the city council finds that the health, safety and welfare of residents
3 of Littleton is being negatively impacted by the lack of housing options;
4

5 **WHEREAS**, the city council further finds that while the scarcity of new
6 condominium projects is not unique to the City of Littleton, the city nevertheless experiences
7 some unique impacts because of its proximity to the light rail line and the aging of its population,
8 among other factors;
9

10 **WHEREAS**, the city council further finds that allegations of violations of the
11 city's building codes, and the likelihood that such violations may continue unremedied for many
12 months or years presents a material risk to the health and safety of residents of Littleton,
13 including the risk that unsafe conditions present as a result of construction defects may be
14 exacerbated by long delays in remedying such conditions, and a material burden upon the city's
15 building department, which has the authority and responsibility to enforce the city's building
16 codes, and may result in increased cost to the city and a lower level of compliance with the city's
17 building codes;
18

19 **WHEREAS**, the city council further finds that lawsuits brought on account of
20 alleged construction defects in condominium projects and planned communities are often brought
21 at the direction of the board of directors of the homeowners association, without the informed
22 consent of the unit owners, thereby depriving the unit owners of the opportunity to become
23 educated about the advantages and disadvantages of pursuing litigation, to have meaningful input
24 regarding the consideration of such decision and to vote on such decision;
25

26 **WHEREAS**, the city council therefore desires to take reasonable steps within its
27 power as a home rule municipality to encourage the development of owner-occupied multi-
28 family residential projects through the adoption of regulations designed to reduce the risk and
29 exposure to builders and developers of such projects, while still protecting homeowners from
30 legitimate construction defect claims;
31

32 **WHEREAS**, the city council also desires to take reasonable steps within its
33 power as a home rule municipality to encourage the prompt and voluntary correction of
34 construction defects that may constitute violations of the city's building code in order to enhance
35 the health and safety of residents of Littleton and to minimize the burden upon the city's building
36 department; and
37

38 **WHEREAS**, the city council also desires to establish that consumers that
39 purchase residences within the city that are located within a community that is managed by a
40 homeowners association have the right to participate in the consideration and determination
41 whether to pursue litigation concerning alleged construction defects, and, for such purpose, the
42 city council desires to take reasonable steps within its power as a home rule municipality to
43 assure that such consumers have the opportunity to become educated about the advantages and
44 disadvantages of pursuing litigation concerning alleged construction defects, to have meaningful
45 input concerning the decision and to be able to vote on such decision;
46

47 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF**
48 **THE CITY OF LITTLETON, COLORADO, THAT:**
49

50 **Common interest community** means real estate described in a declaration with respect to
51 which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate
52 taxes, insurance premiums, maintenance or improvements of other real estate described in a
53 declaration.

54
55 **Condominium** means a common interest community in which portions of the real estate are
56 designated for separate ownership and the remainder of which is designated for common
57 ownership solely by the owners of the separate ownership portions. A common interest
58 community is not a condominium unless the undivided interests in the common elements are
59 vested in the unit owners.

60
61 **Construction Defect** means any instance in which a structure or portion thereof does not
62 conform in all material respects to the applicable section(s) of the Building Code, or does not
63 conform to the manufacturer's specifications if those specifications are more strict than the
64 applicable provisions of the Building Code.

65
66 **Homeowner** means any person who owns a unit in a condominium or in a multi-family building
67 in a common interest community, but shall not include any declarant (as defined in C.R.S. § 38-
68 33.3-103(12)) or any person having an interest in a unit solely as security for an obligation.

69
70 **Homeowners Association** means a unit owners' association formed to represent the interest of
71 Homeowners owning units in a condominium or in a multi-family building in a common interest
72 community.

73
74 **4-7-3: Potential Claimants**
75 An original Homeowner or a subsequent Homeowner or a Homeowners Association
76 representing the interests of Homeowners may provide the notice of a claim of a Construction
77 Defect, provided the notice is sent within the applicable time period.

78
79 **4-7-4: Potential Respondents**
80 Any person or entity within the definition of a "Builder" as defined in section 4-7-2 is subject to
81 the requirements of this chapter.

82
83 **4-7-5: Claimant's Notice to Builder of Construction Defects; Builder's Acknowledgement;
84 Inspection**

85
86 A. Claimant's Notice. Upon the discovery of any alleged Construction Defect, a claimant
87 must provide written notice via certified mail or personal delivery to the party alleged to
88 have caused or contributed to the Construction Defect, in the manner prescribed in this
89 section, indicating that one or more Construction Defects exists in his/her residence or,

90 with respect to any Homeowners Association, that one or more Construction Defects
91 exists in any residence or in any common area or facility. The notice must:

- 92
- 93 1. Provide the claimant's name, address and preferred method of contact;
 - 94
 - 95 2. State that the claimant alleges a Construction Defect pursuant to this
96 chapter against the Builder; and
 - 97
 - 98 3. Describe the claim in reasonable detail sufficient to determine the
99 nature and location of the alleged Construction Defect.
- 100

101 B. Builder's Responsibilities. After receiving notice of a potential Construction Defects
102 claim, a Builder must do each of the following:

103

- 104 1. Acknowledge Claim in Writing.

105

- a) A Builder who receives a notice under this chapter shall acknowledge receipt
106 of the notice, in writing, within fourteen (14) days after receipt. The
107 acknowledgement shall be sent to the claimant and to any attorney the Builder
108 knows to be representing the claimant in connection with the notice. If the
109 Builder has retained legal counsel, said counsel shall thereafter communicate
110 with the claimant's legal representative, if any.

111

- b) If the Builder fails to acknowledge receipt of a notice within the time
112 specified, this chapter shall not apply and the claimant shall be released from
113 the requirements of this chapter and may proceed with the filing of an action
114 against the Builder, unless notice and consent are required by section 4-7-10.
115

116

2. Maintain an agent for notice with the Secretary of State; and

117

118

3. If specifically asked to do so by the claimant and within fourteen (14) days of such a
119 request, provide the claimant or claimant's legal representative with:

120

- a) copies of all relevant plans, specifications, grading plans, soils reports and
121 available engineering calculations pertaining to the claimant's residence,
122 common areas and facilities that are the subject of the claim;

123

- b) all maintenance and preventative maintenance recommendations pertaining to
124 the claimant's residence, common areas and facilities that are the subject of
125 the claim; and

126

- 131 c) contractual warranty information.
132
133 3. A Builder responding to a claimant's request for documents may charge reasonable
134 copying costs and may require the copies of the documents to be made onsite.
135
136 4. Builder's Election to Inspect Property. In addition to the requirements set forth in this
137 section, if the Builder elects to inspect and conduct tests regarding the claimed
138 Construction Defect, the Builder shall complete the initial inspection and testing, if
139 any, within thirty (30) days after the Builder acknowledged receipt of the notice, and
140 at a mutually agreeable date and time. The Builder shall bear all costs of inspection
141 and testing, including any damage caused by the inspection and testing. Before
142 entering onto the premises for the inspection, the Builder shall supply the claimant
143 with proof of liability insurance coverage. The Builder shall, upon request, allow the
144 inspection to be observed and recorded or photographed. Nothing that occurs during a
145 Builder's inspection may be used or introduced as evidence to support a defense of
146 spoliation of evidence by any potential party in subsequent litigation.
147
148 5. A Builder who fails to comply with any of the foregoing requirements within the time
149 specified shall not be entitled to the protection of this chapter, and the claimant shall
150 be released from the requirements of this chapter and may proceed with the filing of
151 an action, unless notice and consent are required by section 4-7-10.
152
153 6. If a notice is sent to the Builder in accordance with this section 4-7-5 within the time
154 prescribed for the filing of an action under any applicable statute of limitations or
155 repose, then the statute of limitations or repose is tolled until sixty (60) days after the
156 completion of the notice process described in this section 4-7-5. If the Builder elects
157 to repair pursuant to section 4-7-6, then the statute of limitations or repose is tolled
158 until sixty (60) days after the completion of repairs.
159

160 **4-7-6: Builder's Right to Repair**

- 161
162 A. Within thirty (30) days of the initial inspection or testing, or within fourteen (14) days of
163 Builder's acknowledgment of the notice of claim, whichever is later, the Builder may
164 elect to repair the Construction Defect. If the Builder elects to repair the Construction
165 Defect, it has the right to do so and the claimant may not, directly or indirectly, impair,
166 impede or prohibit the Builder from making repairs. Any notice to repair shall offer to
167 compensate the claimant for all applicable expenses, if any, incurred by the claimant
168 within the timeframe set for repair, such as, without limitation, expenses for lodging if
169 the repair requires the claimant to vacate his/her residence. Any notice of repair shall be
170 accompanied by a detailed, step-by-step explanation of the particular Construction Defect
171 being repaired and setting forth a reasonable completion date for the repair work. The

172 notice shall also include the contact information for any contractors the Builder intends to
173 employ for the repairs.

174

175 B. Claimant shall promptly cooperate with Builder to schedule repair work by Builder.

176

177 C. Within ten (10) days after receipt of the Builder's notice to repair, a claimant may deliver
178 to the Builder a written objection to the proposed repair if the claimant believes in good
179 faith that the proposed repairs will not remedy the alleged Construction Defect. The
180 Builder may elect to modify the proposal, in whole or in part, in accordance with the
181 claimant's objection, and proceed with the modified scope of work, or may proceed with
182 the scope of work set forth in the original proposal.

183

184 D. Builder's Failure to Comply. If the Builder fails to send a notice to repair or otherwise
185 strictly comply with this chapter within the specified time frames, or if the Builder does
186 not complete the repairs within the time set forth in the notice to repair, the claimant shall
187 be released from the requirements of this chapter and may proceed with the filing of an
188 action against the Builder, unless notice and consent are required by section 4-7-10.
189 Notwithstanding the foregoing, if the Builder notifies the claimant in writing at least five
190 (5) days before the stated completion date that the repair work will not be completed by
191 the completion date, the Builder shall be entitled to one reasonable extension of the
192 completion date, not to exceed twenty (20) days.

193

194 E. Completion of repairs. The Builder shall notify the claimant when repairs have been
195 completed. The claimant shall have ten (10) days following the completion date to have
196 the premises inspected to verify that the repairs are complete and satisfactorily resolved
197 the alleged Construction Defects. A claimant who believes in good faith that the repairs
198 made do not resolve the Construction Defects may proceed with the filing of an action,
199 unless notice and consent are required by section 4-7-10.

200

201 **4-7-7: Warranty of Repairs**

202 The repair work performed by the Builder shall be warranted against material defects in design
203 or construction for a period of two years, which warranty shall be in addition to any express
204 warranties on the original work.

205

206 **4-7-8: Subsequently Discovered Defects**

207 Any alleged Construction Defect discovered after repairs have been completed shall be subject
208 to the same requirements of this chapter if the Builder did not have notice or an opportunity to
209 repair the particular Construction Defect.

210

211 **4-7-9: Alternative Dispute Resolution Provisions**

212 If a provision found in the declaration, bylaws or rules and regulations of a common interest
213 community requires that construction defect claims be submitted to mediation or arbitration, that
214 requirement constitutes a commitment on the part of the unit owners and the association upon
215 which a developer, contractor, architect, builder or other person involved in the construction of
216 the community is entitled to rely. Consequently, a subsequent amendment to the declaration,
217 bylaws or rules and regulations that removes or amends the mediation or arbitration requirement
218 shall not be effective with regard to any construction defect claim that is based on an alleged act
219 or omission that predates that amendment.

220

221 **4-7-10: Informed Consent of Homeowners**

222 Homeowners are entitled to be kept informed by boards of Homeowners Associations of the
223 board's consideration of actions regarding Construction Defects and to have meaningful input
224 and a right to make a considered judgment and give (or withhold) informed consent.
225 Accordingly, if a board of a Homeowners Association considers or intends to institute an action
226 asserting one or more Construction Defects, the board must do each of the following:

227

228 A. At least sixty (60) days before filing any action under section 13-20-803.5, C.R.S., the
229 claimant must mail or deliver written notice to each Homeowner at the Homeowner's last
230 known address.

231

232 B. The notice must be signed by a person other than, and not employed or otherwise
233 affiliated with, the attorney or law firm that represents or will represent the association in
234 the Construction Defects claim.

235

236 C. The notice required by this section must contain the following information:

237

238 1. The nature of the action and the relief sought.

239

240 2. The amount of expenses and fees the board anticipates will be incurred, directly
241 or indirectly, in prosecuting the action, including attorney's fees, consultant fees,
242 expert witness fees and court costs, whether incurred by the association directly
243 or for which it may be liable if it is not the prevailing party or if it does not
244 proceed with the action.

245

246 3. The estimated cost of repairing the Construction Defect, or if the Construction
247 Defect is not repaired, the estimated reduction in value of the unit.

248

249 4. The estimated impact on the marketability of units that are not the subject of the
250 action, including any impact on the ability of the owners to refinance their
251 property during and after the action.

252

- 253 5. The manner in which the association proposes to fund the cost of the action,
254 including any proposed special assessments or the use of any revenues.
255
256 6. The anticipated duration of the action and the likelihood of success.
257
258 7. Whether the Builder has offered to make any repairs and, if so, whether the
259 Builder has made repairs.
260
261 8. The steps taken by the Builder in accordance with this chapter to address the
262 alleged Construction Defect, including any acknowledgement, inspection,
263 election to repair or repairs.

264
265 D. The Homeowners Association may not commence the action unless the board obtains the
266 written consent of Homeowners holding at least a majority of the total voting rights in the
267 association after giving the notice required by this section. Homeowners may vote either
268 directly or through a written ballot signed by the Homeowner. Such consent must be
269 obtained within sixty (60) days after such notice is provided, otherwise the Homeowners
270 shall be deemed to have declined to provide their informed consent to such action.

271
272 **Section 3:** Severability. If any part, section, subsection, sentence, clause or
273 phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the
274 validity of the remaining sections of this ordinance. The City Council hereby declares that it
275 would have passed this ordinance, including each part, section, subsection, sentence, clause or
276 phrase hereof, irrespective of the fact that one or more parts, sections, subsections, sentences,
277 clauses or phrases may be declared invalid.

278
279 **Section 4:** Repealer. All ordinances or resolutions, or parts thereof, in
280 conflict with this ordinance are hereby repealed, provided that this repealer shall not repeal the
281 repealer clauses of such ordinance nor revive any ordinance thereby.

282
283
284 INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council
285 of the City of Littleton on the 21st day of April, 2015, passed on first reading by a vote of 6 FOR
286 and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the
287 Municipal Courthouse and on the City of Littleton Website.

288 PUBLIC HEARING on the Ordinance to take place on the 5th day of May, 2015,

Ordinance No. 25
Series, 2015
Page 10

289 in the Council Chambers, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado, at the
290 hour of 6:30 p.m., or as soon thereafter as it may be heard.

291 PASSED on second and final reading, following public hearing, by a vote of _____ FOR
292 and _____ AGAINST on the 5th day of May, 2015 and ordered published by posting at Littleton
293 Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

294 ATTEST:

295 _____
296 Wendy Heffner
297 CITY CLERK

Phil Cernanec
PRESIDENT OF CITY COUNCIL

298
299 APPROVED AS TO FORM:

300
301 _____
302 Kristin Schledorn
303 CITY ATTORNEY
304

ORDINANCE NO. _____, Series of 2014

TITLE: A BILL FOR AN ORDINANCE TO ADD A NEW SUBSECTION 13.07.130(j) TO THE PARKER MUNICIPAL CODE CONCERNING PLAT NOTE FOR MULTI-FAMILY DEVELOPMENT PLATS

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Parker Municipal Code is amended by the addition thereto of a new Subsection 13.07.130(j) to read as follows:

13.07.130 Certifications.

(j) Town Council will use this plat note for multi-family minor development plats, at the request of the Applicant:

THE TOWN COUNCIL OF THE TOWN OF PARKER HEREBY ESTABLISHES THE FOLLOWING LEGISLATIVE CONDITION TO THE APPROVAL OF THIS MINOR DEVELOPMENT PLAT TO PROMOTE THE PROMPT, EFFICIENT AND COST EFFECTIVE RESOLUTION OF DISPUTES PERTAINING TO THE DEVELOPMENT OF THE PROPERTY AS A MULTI-FAMILY PROJECT, EXCLUDING ANY PROPERTY OWNED BY THE TOWN (THE "PROPERTY"), FOR THE PURPOSE OF ENCOURAGING AND FOSTERING THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE TOWN AND THE CONSTRUCTION OF OWNER-OCCUPIED MULTI-FAMILY DEVELOPMENTS IN THE TOWN.

AS A LEGISLATIVE CONDITION TO THE TOWN COUNCILS APPROVAL OF THIS MINOR DEVELOPMENT PLAT THE FOLLOWING CLAIMS INVOLVING THE PROPERTY SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A COURT OF LAW:

ANY AND ALL CLAIMS (1) THAT ARE BETWEEN ANY TWO OR MORE OF THE FOLLOWING PERSONS OR ENTITIES: (A) ANY OWNER OF ANY PORTION OF THE PROPERTY, (B) ANY COMMON INTEREST COMMUNITY ASSOCIATION CREATED WITH RESPECT TO THE PROPERTY, (C) THE SUBDIVIDER, DEVELOPER OR ANYONE CLAIMING UNDER OR THROUGH ANY SUCH PERSONS, (D) ANY PARTY THAT CONSTRUCTS OR DESIGNS ANY PORTION OF ANY RESIDENTIAL DWELLING UNITS UPON THE PROPERTY, AND (E) ANY CONSTRUCTION PROFESSIONAL AS DEFINED IN THE CONSTRUCTION DEFECT ACTION REFORM ACT, C.R.S. § 13-80-802.5, *ET SEQ.*, AS AMENDED ("CADARA"), AND (2) THAT PERTAINS TO ANY OF (A) THE PROPERTY, (B) ANY DWELLING UNIT OR

OTHER IMPROVEMENTS CONSTRUCTED ON THE PROPERTY OR COMMON AREA DEVELOPMENT STRUCTURE, (C) THE COMMON INTEREST COMMUNITY TO BE CREATED FOR THE PROPERTY OR ANY PORTION THEREOF, OR (D) THE DECLARATION OR OTHER DOCUMENTS GOVERNING SUCH COMMUNITY.

THE LEGISLATIVE CONDITION SHALL NOT PRECLUDE ANY OF THE PERSONS OR ENTITIES DESCRIBED ABOVE FROM ENDEAVORING TO RESOLVE ANY SUCH CLAIM(S) THROUGH EITHER NEGOTIATION OR MEDIATION BEFORE SUBMITTING SUCH CLAIM TO BINDING ARBITRATION. ADDITIONALLY, THE PROPERTY MAY ALSO BE SUBJECT TO A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS THAT MAY IMPLEMENT AND EXPAND UPON THE REQUIREMENTS OF THIS PLAT NOTE AND THAT MAY EXEMPT CERTAIN CLAIMS FROM THE REQUIREMENT THAT SUCH CLAIMS MUST BE SUBMITTED TO BINDING ARBITRATION, INCLUDING CLAIMS BROUGHT TO FORECLOSE LIENS FILED AS A PART OF THE CONSTRUCTION PROCESS, CLAIMS BROUGHT BY A COMMON INTEREST COMMUNITY ASSOCIATION TO RECOVER UNPAID ASSESSMENTS PAYABLE TO SUCH ASSOCIATION OR TO OBTAIN A TEMPORARY RESTRAINING ORDER OR INJUNCTION FROM A COURT OF LAW PROHIBITING A VIOLATION OF SUCH COVENANTS, CONDITIONS AND RESTRICTIONS; PROVIDED, HOWEVER, THAT ANY SUBSEQUENT AMENDMENT OR CHANGE TO SUCH DECLARATION OF COVENANTS, CONDITIONS OR RESTRICTION SHALL NOT ELIMINATE THE REQUIREMENT THAT THE CLAIMS DESCRIBED IN THIS PLAT NOTE, INCLUDING CONSTRUCTION DEFECT CLAIMS, AS MORE PARTICULARLY DEFINED BY THE CADARA, SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A JUDICIAL PROCEEDING.

FOR PURPOSES OF THIS PLAT NOTE, BINDING ARBITRATION SHALL MEAN SUBMISSION OF ANY CLAIM DESCRIBED ABOVE BE SUBMITTED TO A SINGLE ARBITRATOR WHO MUST BE, AT A MINIMUM, A RETIRED COLORADO STATE DISTRICT COURT JUDGE OR FEDERAL DISTRICT COURT JUDGE OR THROUGH THE USE OF SUCH ORGANIZATION THAT SUCH RETIRED JUDGE MAY BE A MEMBER OF, INCLUDING SUCH ORGANIZATIONS AS THE JUDICIAL ARBITER GROUP OR ITS SUCCESSORS. IN SUCH ARBITRATION, THE COSTS AND EXPENSES OF ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES AND SHALL BE CONDUCTED UTILIZING SUCH RULES OF PROCEDURE AS THE ARBITRATOR MAY REASONABLY ADOPT TO PROMOTE THE EFFICIENT AND ECONOMICAL RESOLUTION OF ANY SUCH CLAIM.

ALL FUTURE PURCHASERS OF ANY INTEREST IN THE PROPERTY ARE DEEMED TO HAVE ACCEPTED AND AGREED TO

THE TERMS AND CONDITIONS OF THIS PLAT NOTE, WHICH IS RECORDED IN THE DOUGLAS COUNTY CLERK AND RECORDERS OFFICE AND IS DEEMED TO BE A COVENANT RUNNING WITH THE PROPERTY.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2014.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2014.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

**ORDINANCE OF THE
CITY OF LONE TREE**

Series of 2015

Ordinance No. 15-01

**AN ORDINANCE ADDING A NEW ARTICLE XII TO CHAPTER 18
OF THE MUNICIPAL CODE REGARDING
REPAIR OF CONSTRUCTION DEFECTS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,
COLORADO:**

ARTICLE 1 – AUTHORITY

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

ARTICLE 2 – DECLARATIONS OF POLICY

A. Land use, planning and general business regulation are well-established as matters of purely local concern, and therefore subject to regulation by Home Rule Cities; and

B. The City's Zoning Ordinance and Comprehensive Plan both allow for a diverse housing stock, consisting of a mix of single-family and multi-family developments, both owned and rented units, designed to serve the needs of all Lone Tree residents; and

C. The City Council recognizes the need for owner-occupied units, particularly in transit-oriented zones around light rail stations; and

D. The City Council anticipates vigorous housing development in and around future light rail stations to be located in the City; and

E. The City Council is aware that the paucity of condominiums available for sale in the region can be attributed to a litigation climate that puts builders and developers at risk of substantial judgments, often including punitive damages, for alleged construction defects; and

F. The City Council finds that the risk of exposure to large damage awards has led insurance companies who would normally insure development projects to inflate prices or stop writing policies for owner-occupied multi-family projects; and

G. The City Council finds that the health, safety and welfare of Lone Tree residents are being negatively impacted by the lack of housing options; and

H. The City Council further finds that while the scarcity of new condominium projects is not unique to the City, the City nevertheless experiences some unique impacts because of its proximity to future expansion of the light rail line, among other factors; and

I. The City Council therefore desires to take reasonable steps within its power as a Home Rule City to encourage the development of owner-occupied, multi-family residential projects through the adoption of regulations designed to balance the risk and exposure to builders and developers of such projects, while still protecting homeowners from legitimate construction defect claims.

ARTICLE 3 – SAFETY CLAUSE

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

ARTICLE 4 - ADOPTION

The Code is amended as follows:

A new Chapter 18, Article XII is adopted as follows:

ARTICLE XII

REPAIR OF CONSTRUCTION DEFECTS

Sec. 18-12-10. Purposes and Applicability.

A. The purposes of this Ordinance are to:

1. Encourage the construction of owner-occupied, multi-family developments in the City;

2. Facilitate the implementation of the Comprehensive Plan and Zoning Ordinance, both of which contemplate owner-occupied, multi-family developments in transit-oriented areas and throughout the City;

3. Reassure homeowners that most, if not all, construction defects will be promptly investigated and addressed by builders;

4. Motivate all parties to resolve disputes involving construction defects quickly to avoid the need for expensive and time-consuming litigation; and

5. Provide homeowners in communities with homeowners associations with an enhanced opportunity to participate in the governance of their community by empowering individual owners to give or withhold their informed consent with respect to actions the board of the homeowners association may desire to pursue regarding construction defects.

B. Applicability

This Ordinance shall apply only to new construction commenced after the effective date of this Ordinance.

Sec. 18-12-20. Definitions.

Builder means any non-governmental entity or individual, including but not limited to a builder, developer, general contractor, contractor, subcontractor, architect, engineer or original seller, who performs or furnishes the design, supervision, inspection, construction or observation of any improvement to real property that is intended to be occupied as a dwelling or to provide access or amenities to such an improvement.

Common interest community means real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration.

Condominium means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Construction Defect means any instance in which a structure or portion thereof does not conform in all material respects to the applicable sections of the Building Code in force at the time of construction, or does not conform to the manufacturer's specifications in force at the time of construction, if those specifications are stricter than the applicable provisions of the Building Code.

Cooperative means a common interest community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a unit.

Declarant means any person or group of persons acting in concert who: (i) as part of a common plan, promotional or otherwise, intends to or offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or (ii) reserves or succeeds to any special declarant right.

Homeowner means any person who owns a unit in a condominium or cooperative, but shall not include any Declarant or any person having an interest in a unit solely as security for an obligation.

Homeowners Association means a unit owners' association formed to represent the interests of Homeowners owning units in a condominium or cooperative.

Sec. 18-12-30. Potential Claimants.

An original Homeowner or a subsequent Homeowner, or a Homeowners Association representing the interests of Homeowners, may make a Construction Defect claim and provide the notice of a claim of a Construction Defect, provided the notice is sent within the applicable time period.

Sec. 18-12-40. Potential Respondents.

Any person or entity within the definition of a "Builder" as defined in this Article is subject to the requirements of this Ordinance.

Sec. 18-12-50. Claimant's Notice to Builder of Construction Defect; Builder's Acknowledgement; Inspection

A. Claimant's Notice. Upon the discovery of any alleged Construction Defect, a claimant shall provide written notice of a claim via certified mail or personal delivery to the party alleged to have caused or contributed to the defect, in the manner prescribed in this Section, indicating that one or more Construction Defect exists to any improvement in or on the claimant's real property or residence, or, with respect to any Homeowners Association, that one or more Construction Defect exists to any improvement in or on any real property, residence, common area or facility governed by the association.

The notice must be dated and:

1. Provide the claimant's name, address and preferred method of contact;

2. State that the claimant alleges a Construction Defect pursuant to this Article against the Builder;
3. Describe the claim in reasonable detail sufficient to determine the nature and location of the alleged Construction Defect; and
4. Provide sufficient dates and times, between 7 and 28 days from the date of the claimant's notice, to the Builder to accommodate inspection and testing of the alleged Construction Defect regarding the claim. Reasonable scheduling and access shall be provided by the claimant to the Builder.

B. **Builder's Responsibilities.** After receiving notice of a potential Construction Defect claim, a Builder must do each of the following:

1. **Acknowledge Claim in Writing.**

- a. A Builder who receives a notice under this Article shall acknowledge receipt of the notice, in writing, within 14 days after receipt. The acknowledgement shall be sent to the claimant and to any attorney the Builder knows to be representing the claimant in connection with the notice. If the Builder has retained legal counsel, said counsel shall thereafter communicate with the claimant's legal representative, if any.
- b. If the Builder fails to acknowledge receipt of a notice within the time specified, this Article shall not apply and the claimant shall be released from the requirements of this Article and may proceed with the filing of an action against the Builder, unless notice and consent are required by Sec. 18-12-100.

2. **Maintain an agent for notice with the Secretary of State; and**

3. If specifically asked to do so by the claimant and within 14 days of such a request, provide the claimant or the claimant's legal representative with:
 - a. copies of all relevant plans, specifications, grading plans, soils reports and available engineering calculations pertaining to the claimant's residence, common areas and facilities that are the subject of the claim;
 - b. all maintenance and preventative maintenance recommendations pertaining to the claimant's allegations; and
 - c. contractual warranty information.

C. A Builder responding to a claimant's request for documents may charge reasonable copying costs and may allow inspection of the documents to be made onsite.

D. **Builder's Election to Inspect Property.** In addition to the requirements set forth in this Section, a Builder may elect to inspect and conduct tests regarding the claimed Construction Defect. If a Builder elects to do so, the Builder shall complete the initial inspection and testing, if

any, no later than 28 days after the date of the notice of claim by the claimant or at a mutually agreeable date and time. The Builder shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Upon request, the Builder shall supply the claimant with proof of liability insurance coverage before entering onto the premises. The Builder shall allow the inspection to be observed, recorded and photographed. Nothing that occurs during a Builder's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by any potential party in subsequent litigation.

E. A Builder who fails to comply with any of the requirements of this Section within the time specified shall not be entitled to the protections of this Article; the claimant shall be released from the requirements of this Article and may proceed with the filing of an action, unless notice and consent are required by Sec 18-12-100.

F. If a notice is sent to the Builder in accordance with Sec. 18-12-50 within the time prescribed for the filing of an action under any applicable statute of limitations or repose, then the statute of limitations or repose is tolled until sixty days after the completion of the notice process described in Sec. 18-12-50. If the Builder elects to repair pursuant to Sec. 18-12-60, then the statute of limitations or repose is tolled until sixty days after the completion of repairs.

Sec. 18-12-60. Builder's Repair.

A. Within thirty (30) days of the initial inspection and testing, if any, or within 14 days of the Builder's acknowledgement of receipt of notice of claim, whichever is later, the Builder may elect to repair the Construction Defect and shall deliver a notice to repair to the claimant. Any notice to repair i) shall offer to compensate the claimant for all applicable damages, if any, during the timeframe set for repair, ii) shall be accompanied by a detailed, step-by-step explanation of the particular defect being repaired, and iii) shall set forth a reasonable starting and completion date for the repair work. The notice shall also include the contact information for any contractors the Builder intends to employ for the repairs.

B. Within ten (10) days after receipt of the Builder's notice to repair, a claimant may deliver to the Builder a written objection to the proposed repair if the claimant believes in good faith that the proposed repairs will not remedy the alleged defect. Within ten (10) days of receipt of the written objection, the Builder may elect to modify the proposal in accordance with the claimant's objection to the claimant's satisfaction, or may propose alternatives to the scope of work set forth in the original proposal. A claimant may deliver to the Builder a written objection to the proposed alternatives within ten (10) days, after which the claimant may continue to negotiate with the Builder or proceed with the filing of an action against the Builder, unless notice and consent are required by Sec 18-12-100. A Builder shall not make repairs while an objection is pending without the written consent of the claimant.

C. Builder's Failure to Comply. If the Builder fails to send a notice to repair or otherwise strictly comply with this Article within the specified time frames, or if the Builder does not complete the repairs within the time set forth in the notice to repair, the claimant shall be released from the requirements of this Article and may proceed with the filing of an action against

the Builder, unless notice and consent are required by Sec. 18-12-100. Notwithstanding the foregoing, if the Builder notifies the claimant in writing at least five (5) days before the stated completion date that the repair work will not be completed by the completion date, the Builder shall be entitled to one reasonable extension of the completion date, not to exceed ten days unless otherwise agreed.

D. Completion of repairs. The Builder shall notify the claimant when repairs have been completed. The claimant shall have ten (10) days following the completion date to have the premises inspected to verify that the repairs are complete and satisfactorily resolved the alleged defects. A claimant who believes in good faith that the repairs made do not resolve the defects may proceed with the filing of an action unless notice and consent are required by Sec. 18-12-100.

E. Nothing in this Article shall preclude the claimant and Builder from reaching a mutual agreement regarding a full or partial settlement and withdrawal of the Construction Defect claim.

Sec. 18-12-70. Warranty of Repairs.

The repair work performed by the Builder shall be warranted against material defects in design and construction for a period of two years, which warranty shall be in addition to any express warranties on the original work.

Sec. 18-12-80. Subsequently Discovered Defects.

If notice of a particular Construction Defect is not given to a Builder by claimant with an opportunity to repair the defect, any alleged Construction Defect discovered after any repairs have been completed shall be subject to the same requirements of this Article.

Sec. 18-12-90. Alternative Dispute Resolution Provisions.

Nothing in this Article shall preclude the claimant and Builder from reaching a mutual agreement regarding alternative dispute resolutions. If a provision found in the declaration, bylaws or rules and regulations of a Homeowners Association or a common interest community requires that Construction Defect claims be submitted to mediation or arbitration, that requirement constitutes a commitment on the part of the unit owner and the association upon which a developer, contractor, architect, builder or other person involved in the construction of the community is entitled to rely. Consequently, a subsequent amendment to the declaration, bylaws or rules and regulations that removes or amends the mediation or arbitration requirement shall not be effective in regard to any Construction Defect claim that is based on an alleged act or omission previously discovered.

Sec. 18-12-100. Informed Consent of Homeowners.

Homeowners are entitled to be kept informed by boards of Homeowners Associations of the board's consideration of actions regarding Construction Defects and to have meaningful input and a right to make a considered judgment and give or withhold informed consent. Accordingly, if a board of an association considers or intends to institute an action asserting one or more Construction Defect, the board must do each of the following:

A. At least sixty (60) days before filing any action under Section 13-20-803.5, C.R.S., the claimant must mail or deliver written notice to each Homeowner at the Homeowner's last known address.

B. The notice must be signed by a person other than, and not employed or otherwise affiliated with, the attorney or law firm that represents or will represent the Homeowners Association in the construction defects claim.

C. The notice required by this section must contain the following information:

- i. The nature of the action and the relief sought;
- ii. The amount of expenses and fees the board anticipates will be incurred, directly or indirectly, in prosecuting the action, including attorney's fees, consultant fees, expert witness fees and court costs (whether incurred by the association directly or for which it may be liable if it is not the prevailing party), or if it does not proceed with action;
- iii. The estimated cost of repairing the defect, or if the defect is not repaired, the estimated reduction in value of the unit;
- iv. The estimated impact on the marketability of units that are not the subject of the action, including any impact on the ability of the Homeowners to refinance their property during and after the action;
- v. The manner in which the association proposes to fund the cost of the action, including any proposed special assessments or the use of any revenues;
- vi. The anticipated duration of the action and the likelihood of success;
- vii. Whether the Builder has offered to make any repairs and, if so, whether the Builder has made repairs; and
- viii. The steps taken by the Builder in accordance with this Article to address the alleged defect, including any acknowledgement, inspection, election to repair or offered repairs.

D. The Homeowners Association may not commence an action unless the board obtains the written consent of Homeowners holding at least a majority of the total voting rights in the association, not including Declarants, after giving the notice required by this Section. Homeowners may vote either directly or through a proxy directed in writing by the Homeowner and confirmed in writing by the proxy. Such consent must be obtained within 60 days after such

notice is provided; otherwise the Homeowner shall be deemed to have declined to provide informed consent to such action.

ARTICLE 5 - SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given the effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 6 – CAUSES OF ACTION RETAINED

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding pending in any court on the effective date of this Ordinance.

ARTICLE 7 - EFFECTIVE DATE

This Ordinance shall take effect on April 1, 2015.


INTRODUCED READ AND ORDERED PUBLISHED ON FEBRUARY 3, 2015.

**PUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON FEBRUARY 12, 2015,
LEGAL NOTICE NO. 9266859.**

**APPROVED AND ADOPTED AS AMENDED ON SECOND READING ON FEBRUARY
17, 2015.**

**REPUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON FEBRUARY 26, 2015,
LEGAL NOTICE NO. 926929.**

CITY OF LONE TREE:


James D. Gunning, Mayor

ATTEST:


Jennifer Pettinger, CMC, City Clerk

