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Carolynne C. White, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
RIVER EDGE COLORADO**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
RIVER EDGE COLORADO**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER EDGE COLORADO (this "**Declaration**") is made this ___ day of _____, 2011, by CARBONDALE INVESTMENTS, LLC, a Texas limited liability company, registered to do business in Colorado ("**Declarant**").

A. Declarant owns that certain parcel of land located in Garfield County, Colorado, having the legal description set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Real Estate**"), upon which Declarant hereby establishes River Edge Colorado (the "**Community**"), a "planned community" as defined by the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et. seq. (the "**Act**").

B. Declarant also owns that certain real estate in Garfield County, Colorado, having the legal description set forth on **Exhibit B** attached hereto and incorporated herein by this reference ("**Additional Property**"), which real estate Declarant has the right to add to the Real Estate.

C. Declarant has caused the River Edge Colorado Property Owners' Association, Inc., a Colorado nonprofit corporation (the "**Association**"), to be incorporated under the laws of the State of Colorado as an owners association for the purpose of exercising the functions as herein set forth.

**ARTICLE I
GENERAL**

Section 1.1 Development of Project.

(a) Declarant hereby submits the Real Estate to this Declaration as a residential planned community, with the potential for Community Service Uses within the Neighborhood Center (defined herein), created by Declarant in accordance with the terms and provisions of the Act.

(b) This Declaration is executed (i) in furtherance of a common and general plan for the development of the Community; (ii) to protect and enhance the quality, aesthetics, desirability, and attractiveness of the Community; (iii) to further a plan for the improvement, sale, and ownership of the Lots to the end that a harmonious and attractive development of the Real Estate may be accomplished and the health, comfort, safety, convenience, and general welfare of Declarant, its successors and assignees in the Real Estate, and any parts thereof, may be promoted and safeguarded; (iv) to set forth the responsibilities and authority of the Association to govern and manage the Community and to manage and maintain the Common Elements; (v) to define certain duties, powers, and rights of the Owners; and (vi) to define certain duties, powers, and rights of Declarant.

Section 1.2 Submission of Property. All of the Real Estate, and all Additional Property annexed into the Real Estate from time to time as set forth herein, shall be held, sold,

and conveyed subject to the easements, restrictions, covenants, requirements and conditions included in this Declaration including, without limitation, the Development Rights and/or Special Declarant Rights set forth in Article XVI below and all other rights reserved to Declarant under this Declaration.

Section 1.3 **Covenants Running with the Real Estate**. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Real Estate.

Section 1.4 **Binding Upon and Inure to the Successors**. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assignees. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association, or other entity, in accordance with the provisions of the Act.

ARTICLE II DEFINITIONS

All terms beginning with a capital letter and not otherwise defined herein shall have the meanings given to them in this Article II, or if not defined in this Article II, then as defined in the Act.

Section 2.1 "**Act**" means the Colorado Common Interest Ownership Act, codified as amended at C.R.S. §38-33.3-101 et seq., as the same may be further amended and/or re-numbered from time to time.

Section 2.2 "**Additional Property**" means the real property described in Recital B above that Declarant reserves the right to annex into the Community and make subject to this Declaration pursuant to its Development Rights set forth in Section 16.1 below.

Section 2.3 "**Administrative Functions**" means all functions of the Association as are necessary and proper under this Declaration and the Act and may include, without limitation, providing management and administration of the Association; performing the duties and obligations of the Association pursuant to Article VI hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against any Association Properties; incurring filing fees, recording costs and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other such reasonable and ordinary administration tasks associated with operating the Association.

Section 2.4 "**Agency**" or "**Agencies**" means the Federal National Mortgage Association ("**FNMA**"), the Government National Mortgage Association ("**GNMA**"), the Federal Home Loan Mortgage Corporation ("**FHLMC**"), the Department of Housing and Urban Development ("**HUD**"), the Department of Veterans Affairs ("**VA**"), the Colorado Housing and

Finance Authority ("**CHFA**"), the Garfield County Housing Authority ("**GCHA**") or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

Section 2.5 "**Affordable Lots**" means those certain income and market-rate deed-restricted Lots identified in the Plat as the "_____." Upon the expiration or termination of said deed restrictions, the Affordable Lots shall be treated hereunder in the same manner as the other Garden Home Lots (defined below), and such Lots' General Assessment Percentages shall be recalculated in accordance with the formulas set forth in **Exhibit C**. No consent shall be required from the Association, Owners, or any other person for Declarant or the Board to exercise such rights, and any amendment to this Declaration or the Plat that is required to implement such reallocation may be executed solely by Declarant.

Section 2.6 "**Allocated Interests**" means the applicable Assessment liability and the votes in the Association allocated to each Lot in this Declaration, as allowed for in the Act, in accordance with formulas set forth in **Exhibit C** and **Section 5.1**, respectively.

Section 2.7 "**Agricultural Uses**" mean the planting, cultivating, harvesting, and storage of grains, hay, or plants, or the planting and cultivation of nursery stock or landscape materials.

Section 2.8 "**Amenities**" means certain of the Common Elements that may be constructed or caused to be constructed by Declarant or the Association and made available for use by Owners and their Permittees, for recreational, social and other purposes, and that also may be subject to one or more easements for access, use and enjoyment, including, without limitation, the Neighborhood Center, Neighborhood Trail, and active and passive open space areas and parks (which may include tot lots, playfields, and/or a trail system).

Section 2.9 "**Architectural Control Board**" or "**ACB**" means the board established in accordance with **Article XII** below.

Section 2.10 "**Articles of Incorporation**" means the Articles of Incorporation of the River Edge Colorado Property Owners' Association, Inc., a Colorado nonprofit corporation, filed in the Office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

Section 2.11 "**Assessment**" or "**Assessments**" means any and all assessments for Common Expenses or for any other purpose stated herein levied by the Association against a Lot or its Owner pursuant to this Declaration or the Act, including, without limitation, Regular Assessments, Special Assessments, Individual Purpose Assessments, and Default Assessments.

Section 2.12 "**Association**" means the River Edge Colorado Property Owners' Association, Inc., a Colorado nonprofit corporation, its successors and assignees.

Section 2.13 "**Attached Lots**" means the Lots identified on the Plat as the "_____."

Section 2.14 "**Board**" means the board of directors of the Association.

Section 2.15 "**Budget**" has the meaning given it in Section 7.7 below.

Section 2.16 "**Bulk Services Agreement**" means one or more agreements for the provision of certain services for the Lots or portions of the Lots for such terms and rates as the Board deems appropriate, including, but not limited to, cable television, community satellite television (subject to state and federal law), electronic entertainment, information or communications services, trash collection and any other service the Board believes to be in the best interest of the Association.

Section 2.17 "**Bylaws**" means the Bylaws of the Association as the same may be amended from time to time.

Section 2.18 "**Common Elements**" mean the Real Estate and all Improvements constructed thereon (i) owned by the Association (other than any Lot acquired by the Association through a foreclosure of its lien for assessments), including, without limitation, the Neighborhood Center, the Neighborhood Trail, any other trails, all roads and sidewalks, and raw water, potable water, and/or sanitary sewer infrastructure and facilities (ii) leased by the Association, (iii) constituting the easement area under any easement naming the Association as grantee, or (iv) for which the Association has maintenance responsibility pursuant to any written agreement with any governmental authority having jurisdiction over the Real Estate. The term Common Elements shall include all Limited Common Elements, as more particularly set forth in Section 4.2. The term "Common Elements" shall not include the Conservation Easement Area, any Improvements located within the Conservation Easement Area, or the Off-Site Facilities.

Section 2.19 "**Common Expense**" means any expenditure made or liabilities incurred by or on behalf of the Association and paid as Assessments, together with any allocations to reserves, including, but not limited to:

(a) Expenses of administration, operation, maintenance, repair, regulation, or replacement of any Common Elements;

(b) Expenses related to the Architectural Control Board not attributable to a certain project or otherwise paid by an Owner;

(c) Expenses related to the Association's performance of the grantor's obligations and exercise of the grantor's rights under the Conservation Easement Agreement, including, without limitation, payment of all or a portion of the Stewardship Fee (as defined herein);

(d) Expenses related to the Associations performance of the grantor's obligations and exercise of the grantor's rights under the RFTA Open Space Easement Agreement (as defined herein);

(e) Expenses declared to be Common Expenses by the Governing Documents or by the Act;

(f) Expenses otherwise agreed upon as Common Expenses by the Board;

(g) Expenses related to the Association's performance of its obligations under any agreement or contract to which the Association is a party, including, without limitation, any Bulk Services Agreement;

(h) Such reasonable reserves as may be established by the Association following the adoption of a Budget and the initial collection of Assessments pursuant to such Budget, whether such reserves are held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held or maintained (under an easement, license or contract) by the Association;

(i) Expenses of administration, construction, installation, operation, maintenance, repair, regulation, or replacement of any Off-Site Facilities, including expenses related to obtaining permits in accordance with applicable law required for the same; and

(j) Expenses related to the annual establishment of the Heron Activity Zone (defined herein), including, without limitation, the costs related to hiring a wildlife biologist to prepare the Annual Survey (defined herein).

Common Expenses shall not include expenses related to the maintenance, operation, repair or replacement of any Limited Common Elements.

Section 2.20 "**Community**" means the totality of all of the Real Estate, the Tracts, the Lots and the Common Elements.

Section 2.21 "**Community Garden or Orchard Use**" means a vegetable garden and/or orchard that is communally cultivated and cared for, which use shall be permitted on the Garden/Orchard Tracts. Subject to the Rules and Regulations, Garden/Orchard Tracts may consist of individual plots, multiple caretaker areas, sitting areas, small-scale children's play areas and other ancillary horticultural related uses, and may be used for community festivals and celebrations.

Section 2.22 "**Community Service Space(s)**" means leasable space within the Neighborhood Center, which space may be used for Community Service Use(s). Community Service Space(s) shall be owned by the Association.

Section 2.23 "**Community Service Tenant**" means a tenant or concessionaire of any Community Service Space.

Section 2.24 "**Community Service Uses**" mean not-for profit or for-profit uses that may, subject to the PUD Plan and this Declaration, be operated within the Community Service Space(s), if any. Community Service Uses shall be operated by a Community Service Tenant for the benefit of residents of the Community and may include, without limitation, a day care facility, a sandwich/coffee shop, and/or a health club.

Section 2.25 "**Conservation Easement Agreement**" means that certain Grant of Conservation Easement, dated February 3, 2000, by and between Sanders Ranch Holdings, LLC, its successors and assigns, as grantor, and Roaring Fork Conservancy ("**RFC**"), as grantee,

recorded at Reception Number 559036 in the real property records of Garfield County, Colorado, as the same has been or may be supplemented or amended from time to time.

Section 2.26 "**Conservation Easement Area**" means the "Easement Property" established by the Conservation Easement Agreement, which Easement Property is legally described by the document recorded on December 24, 2008 at Reception Number 760571 in the real property records of Garfield County, Colorado. The Conservation Easement Area is located outside of, but adjacent to the west of, the Community.

Section 2.27 "**Construction Defect Claim**" means a claim, asserted by the Association on its own behalf, or on behalf of the Owners of two (2) or more Lots, for damages or other relief arising out of any alleged defect in the design or construction of any Improvement that constitutes part of the Community at any time while this Declaration is in force.

Section 2.28 "**County**" means Garfield County, Colorado.

Section 2.29 "**County Regulations**" means all laws, ordinances, and regulations of the County including, without limitation, the Garfield County Unified Land Use Resolution of 2008, as the same may be amended from time to time.

Section 2.30 "**Declarant**" means Carbondale Investments, LLC, a Texas limited liability company registered to do business in Colorado, its successors and assignees, if such successors and assignees are designated by Declarant to serve as a declarant for any specified purposes or for all purposes under this Declaration, in a written instrument duly executed by Declarant and the designated successor or assignee and recorded in the County.

Section 2.31 "**Declarant Control Period**" means the period beginning on the date this Declaration is recorded in the real property records of Garfield County, Colorado and ending as set forth in Section 5.3 below.

Section 2.32 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for River Edge Colorado, as it may be amended and/or supplemented from time to time.

Section 2.33 "**Default Assessment**" shall have the meaning given to that term in Section 7.1.

Section 2.34 "**Development Rights**" means those rights set forth in Article XVI of this Declaration and shall include all "development rights" defined by the Act.

Section 2.35 "**First Mortgage**" means a Security Interest in a Lot that has priority over all other Security Interests in the Lot.

Section 2.36 "**First Mortgagee**" means any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.37 "**Garden Home Lots**" means the Lots identified on the Plat as the "_____."

Section 2.38 "**Garden/Orchard Tracts**" means the Tracts identified on the Plat as the "_____," which Tracts may be used for, among other things as set forth in the PUD Plan, Community Garden or Orchard Use.

Section 2.39 "**General Assessment Percentage**" means the percentage of liability allocated to a given Lot, as set forth in **Exhibit C**, for those Common Expenses that relate to or benefit the whole Community. The formula for calculating the General Assessment Percentage is as stated in **Exhibit C**. Except for rounding errors, the sum of the General Assessment Percentage shall equal one hundred percent (100%).

Section 2.40 "**General Common Elements**" means all of the Common Elements, except the Limited Common Elements.

Section 2.41 "**Governing Documents**" means this Declaration, the Plat, the Articles of Incorporation, the Bylaws, the Rules and Regulations, the Policies, the PUD Plan, and any Design Guidelines, all as the same may be amended and/or supplemented from time to time.

Section 2.42 "**Heron Activity Zone**" means a restricted activity zone where no external construction activities, new building erection, crane use, or trail use may occur from and including March 1st through and including August 1st of each year. The Heron Activity Zone shall be determined on an annual basis by an accredited wildlife biologist. The wildlife biologist shall conduct a survey of the Conservation Easement Area sometime between February 15th and May 1st, inclusive, of each year (the "**Annual Survey**") to determine the location of any active heron nests. Based on the results of this survey, a 200 meter radius from the trunk of any tree housing active heron nests shall be established. This radius (or radii) shall be the "Heron Activity Zone." The Heron Activity Zone is not the same as the Heron Protection Area (defined herein). The Association shall be responsible for ensuring the foregoing requirements are met, including, without limitation, hiring and paying for the services of the wildlife biologist. In the event the wildlife biologist determines as part of an Annual Survey that no active heron nests exist within the Conservation Easement Area, this requirement that an Heron Activity Zone be annually established, and all related activity restrictions for such zone, shall automatically terminate and be of no further force and effect.

Section 2.43 "**Improvement**" means all structures and improvements located upon the Real Estate and any appurtenances thereto of every type or kind including, but not limited to, patio covers, awnings, the painting of any exterior surfaces of any visible structure, roofing, trash containers, mail boxes, satellite dishes, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, ponds, fountains, the Neighborhood Center, Neighborhood Trail, gatehouses, roads, driveways, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, trees and shrubs, gardens, poles, signs, exterior tanks, solar equipment, grading, filling, or similar disturbance to the surface of the land, exterior air conditioning, and utility lines and facilities, all as the same may be constructed, maintained, repaired, renovated, or replaced from time to time.

Section 2.44 "**Individual Purpose Assessment**" shall have the meaning given that term in Section 7.4.

Section 2.45 "**Limited Common Elements**" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Lot, or are limited to and reserved for the common use of the Owners of more than one (1), but fewer than all, of the Lots, and which are appurtenant to said Lot(s).

Section 2.46 "**Lot**" means a physical portion of the Community that is designated for separate ownership or occupancy and the boundaries of which are depicted upon the Plat. For the purpose of conforming the terms and provisions of this Declaration to the terms and provisions of the Act, the term "**Lot**" as defined and used herein shall have the same meaning as the term "**Unit**" as defined and used in the Act. The term Lot shall not include: (a) any property owned by a public body; (b) any property owned by the Association; (c) any property that constitutes a Common Element; (d) any property designated or reserved on the Plat for right-of-way, drainage, common area or open space use or for use for any public or quasi-public facility regardless of the ownership of such property; or (e) any Tracts.

Section 2.47 "**Manager**" means a person or entity who may be engaged by the Association to perform certain duties, powers or functions of the Association, to the extent the Board may authorize from time to time.

Section 2.48 "**Materials Processing**" means the processing of onsite sand and gravel deposits, claimed as a result of site development, for use in the construction of the Community's infrastructure and housing, buildings or facilities within the Community. This use may include, without limitation, screening, crushing, washing, and the creation of concrete from processed sand and gravel resources.

Section 2.49 "**Member**" means a member of the Association by virtue of ownership of a Lot in the Community.

Section 2.50 "**Neighborhood Center**" means the neighborhood center that may be constructed or caused to be constructed by Declarant or the Association within the area identified on the Plat as Tract AA. If constructed, the Neighborhood Center could include meeting room(s), a fitness room, offices, a kitchenette, restrooms, indoor and outdoor recreational facilities, and Community Service Space(s).

Section 2.51 "**Neighborhood Trail**" means the pedestrian trail that may be located within that certain private trail easement identified on the Plat as the "8' Trail Easement."

Section 2.52 "**Off-Site Facilities**" mean the raw water, potable water, and/or sanitary sewer infrastructure and facilities located outside the boundaries of the Community (i) owned by the Association, (ii) leased by the Association, or (iii) for which the Association holds an easement to access, use, construct, operate, maintain, repair, and/or obtain permits for in compliance with applicable law.

Section 2.53 "**Owner**" means any record owner (including a Declarant), whether one or more persons or entities, of a fee simple title interest to any Lot; but excluding, however, any

such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof). Notwithstanding the foregoing, the Association shall not be deemed an Owner and shall have no rights as an Owner with respect to any Lot to which it takes title.

Section 2.54 "**Plat**" means, collectively, that certain River Edge Colorado Final Plan, recorded _____ at Reception No. _____, in the Office of the Clerk and Recorder of the County, and all final plats and final replats that (a) affect any portion of the Community; (b) are approved by the County; and (c) are recorded in the Office of the Clerk and Recorder of the County as of or at any time after the date of this Declaration. The Plat is deemed part of this Declaration pursuant to Section 209 of the Act, and the term "Plat" shall include any supplements and/or amendments thereto.

Section 2.55 "**Permittees**" means all Owners of Lots, their successors and assigns, and their tenants, as well as family members residing in the Lot, and their guests, contractors, agents, invitees, and licensees.

Section 2.56 "**Policies**" means any policies adopted or promulgated by the Association, including, without limitation, the eight (8) policies of corporate governance required by the Act.

Section 2.57 "**PUD Plan**" means the River Edge Colorado PUD Plan, recorded _____ at Reception No. _____, in the real property records of Garfield County, Colorado, together with the River Edge Colorado PUD Guide, recorded at Reception No. _____, in the real property records of Garfield County, Colorado, which documents were approved by Garfield County Board of County Commissioners Resolution No. _____, as the same may be supplemented and/or amended from time to time.

Section 2.58 "**Real Estate**" means the real property comprising the Community. The initial Real Estate is legally described in Recital A above. The term "Real Estate" shall be deemed to include those portions of the Additional Property annexed into or included in the Community from time to time by recorded amendment and/or supplement.

Section 2.59 "**Regular Assessment**" means those Assessments described in Section 7.2.

Section 2.60 "**RFTA**" means the Roaring Fork Transit Authority.

Section 2.61 "**RFTA Open Space Easement Agreement**" means that certain Grant of Easement Open Space Easement, by and between Sanders Ranch Holdings, LLC, as grantor, and RFTA (formerly the Roaring Fork Railroad Holding Authority), as grantee, recorded on August 2, 1999 at Reception Number 549754 in the real property records of Garfield County, Colorado, as the same has been or may be supplemented or amended from time to time.

Section 2.62 "**RFTA ROW**" means that certain right-of-way located immediately east of the Community, which right-of-way currently is used as a bicycle and pedestrian trail. The RFTA ROW is preserved as a rail corridor and falls within the jurisdictions of RFTA and the Colorado Public Utilities Commission.

Section 2.63 "**Rules and Regulations**" has the meaning set forth in Section 6.15 below.

Section 2.64 "**Security Interest**" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association and any other consensual lien or title retention contract intended as security for an obligation.

Section 2.65 "**Special Assessment**" means any Special Assessment described in Section 7.3.

Section 2.66 "**Special Declarant Rights**" means those rights set forth in Article XVI and shall include all "special declarant rights" defined by the Act.

Section 2.67 "**Tract**" means any physical portion of the Community which is designated on the Plat as a tract, and the boundaries of which are depicted on the Plat.

ARTICLE III LOT DESCRIPTIONS

Section 3.1 **Description of Project**. The Community consists initially of [] Lots. The maximum number of Lots that may be created in the Community is 366 Lots.

Section 3.2 **Legal Description of Lots**. The identification of each Lot is to be shown on an applicable plat, map or deed for properties included in the Community. Every contract for sale, deed, lease, Security Interest, will, and every other instrument affecting title to a Lot shall legally describe a Lot by its identifying Lot number, followed by the name of the Community, with reference to the applicable Plat and subject to easements and licenses of record, including, without limitation, this Declaration. Reference to this Declaration and/or the Plat in any instrument shall be deemed to include any supplement(s) and/or amendment(s) to this Declaration or the Plat without specific reference therein.

Section 3.3 **Legal Effect of Description**. Every contract, deed, lease, mortgage, deed of trust, and Security Interest will, and every other instrument affecting title to a Lot that legally describes said Lot substantially in the manner set forth in Section 3.2 hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect title to the Lot, and all other appurtenant properties and property rights, and incorporate all of the rights, limitations, obligations, and burdens incidental to ownership of a Lot as described in this Declaration and the Plat. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Lot and the use of all the General Common Elements, as well as all of the Limited Common Elements appurtenant to said Lot, all as more fully provided in this Declaration.

Section 3.4 **Taxation**. Each Lot shall be assessed separately for all taxes, assessments, and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, other District and any other taxing or assessing authority, in accordance with the Act. The Common Elements and other property owned by the Association,

if any, shall be appraised and valued pursuant to the provisions of Section 105 of the Act, as the same may be amended or modified. The Association shall furnish to the tax assessor of the County and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

Section 3.5 **Inseparability**. Except as provided in Section 3.8 hereof, each Lot, and all appurtenances, rights, and burdens connected therewith, shall be inseparable and every conveyance, transfer, devise, lease, encumbrance, or other disposition of a Lot shall be deemed to be a conveyance, transfer, devise, lease, encumbrance, or other disposition, as the case may be, of the entire Lot, together with all appurtenant rights, interests, duties, and obligations created by law or by this Declaration.

Section 3.6 **Non-Partitionability**. The Common Elements shall be owned by the Association for the benefit of the Owners and not by the Owners of Lots themselves.

Section 3.7 **Right to Create Attached Dwelling Units**.

(a) Subject to Article XII of this Declaration, the construction of an attached two (2) dwelling unit structure shall be permitted on the Attached Lots and Garden Home Lots, provided that all of the following requirements are met:

(i) Only one (1) dwelling unit shall be allowed within each Lot;

(ii) Only one (1) common wall shall be shared by the attached dwelling units;

(iii) The common wall shall be constructed along a side lot line;

(iv) A common or party wall agreement and maintenance easement in the form attached hereto as **Exhibit D** running with the land shall be entered into by the Owners and approved by the ACB. The common wall agreement and maintenance easement shall address each Owner's respective maintenance and repair obligations with regard to the following:

(1) Any portion of the shared wall that does not constitute a finished surface thereof;

(2) Any chute, flue, duct, wire, conduit, bearing, column, or other fixture serving both Lots; and

(3) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios, all exterior doors and windows, and all other exterior fixtures.

Notwithstanding anything to the contrary contained in this Declaration or the Act, the items described in Subsections 3.7 (a)(iv)(1), (2), and (3) shall not constitute General Common Elements or Limited Common Elements.

(v) Any such attached two-dwelling units shall be constructed as a pair, and no certificates of occupancy shall be issued until both units are complete;

(vi) No future enlargement or additions to an attached dwelling unit shall be allowed without the prior written consent of the Owner of the other dwelling unit, which consent shall not be unreasonably withheld; and

(vii) In no event may the total number of Lots that may be created within the Community exceed 366 Lots.

Section 3.8 **Right to Combine and Divide Lots.** Declarant shall have, as part of its Development Rights, the right to combine adjacent Lots into one (1) Lot, and any such combined Lot, and only such combined Lot, may be later subdivided in accordance with the provisions of this Section 3.8. In no event, however, may the total number of Lots that may be created within the Community exceed 366 Lots. All costs incurred in connection with the combination or division shall be borne by Declarant. Any previously combined Lots that are subsequently divided shall be divided on the same boundaries that originally existed between such Lots. If Lots are combined, the General Assessment Percentage allocated to the combined Lots shall be the sum of the General Assessment Percentage in the Lots that were combined prior to the combination. Any previously combined Lots that are later divided shall be reinstated to the General Assessment Percentages which they had prior to the combination. Any amendment to this Declaration and the Plat implementing a combination or division under this Section 3.8 shall be executed and filed in accordance with the Act. No consent shall be required from the Association, the Board, or any other person for Declarant to exercise such rights, and any amendment to this Declaration or the Plat that is required to implement such combination or division may be executed solely by Declarant.

ARTICLE IV OWNER'S RIGHTS IN COMMON ELEMENTS

Section 4.1 **Rights of Ingress and Egress.** Declarant, every Owner and its Permittees shall have a perpetual right and easement of enjoyment in and to the General Common Elements, including, without limitation, all internal streets, alleys and sidewalks, and those Limited Common Elements appurtenant to such Owner's Lot, for the purpose of entering and exiting such Owner's Lot, any Amenities, and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Lot; provided, however, that such rights and easements shall be subject to the following:

(a) The right of Declarant and the Association to limit access into the Community through use of a gate card or transmitter, admission by an attendant on duty at the gate house or through the use of a telephone/gate opening system. Without limiting the generality of the foregoing:

(i) Declarant and the Association shall have the right, but not the obligation, to deny ingress to any person who, in the opinion of Declarant or the Association, may create or participate in a disturbance or nuisance within the Community; provided, however, that Declarant and the Association shall not deny an Owner or mortgagee the right of ingress or

egress to obtain utility services to any portion of the Community owned by such Owner or Mortgagee;

(ii) In the event access into the Community is limited by an attendant on duty at the gate house, the Association shall have the right, but not the obligation, to suspend access into the Community by an Owner through use of the Owner's gate card or transmitter for any period during which any Assessment against such Owner or against such Owner's Lot remains unpaid and, for any period of time which the Owner may deemed appropriate for such Owner's infraction, or the infraction by such Owner's Permittee, of the Governing Documents; provided, however, that, in no event may Declarant or the Association deny an Owner the use of the entrance areas, roads, or sidewalks within the Community so as to prohibit ingress and egress to the Owner's Lot or Dwelling Unit or to deny utility service; and

(iii) Declarant and the Association shall have the right, but not the obligation, to (1) adopt Rules and Regulations pertaining to the use of roads and sidewalks within the Community, (2) control and regulate all types of traffic on the roads and sidewalks within the Community, including, without limitation, by imposing speeding fines and/or prohibiting go-carts or other three wheeled vehicles, (3) control and prohibit parking on all or any part of the roads and sidewalks within the Community, and (4) remove or require the removal of any fence, wall, hedge, shrub, bush, tree or other thing, natural or artificial which is placed or located within the Community, if the location of the same will, in the opinion of Declarant or the Association, obstruct the vision of motorists.

(b) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, duties, and obligations contained in the Governing Documents;

(c) The right of the Association to suspend the voting rights of an Owner, levy reasonable fines against an Owner, suspend any and all rights of any Owner to use any of the Amenities or other facilities for any period during which any Assessment against such Owner or against such Owner's Lot remains unpaid and, for any period of time which the Association may deem to be appropriate for such Owner's infraction, or the infraction by such Owner's Permittee, of the Governing Documents;

(d) The right of the Association to adopt, modify and/or rescind, from time to time, Rules and Regulations concerning the Lots, Common Elements, and/or any property owned by the Association, and any facilities located thereon, as the Association may determine is necessary or prudent;

(e) The right of Declarant or the Association to authorize other persons to entre upon or use the Common Elements for uses not inconsistent with the Owners' rights therein.

(f) The right of the Association to grant permits, licenses, and easements over the Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Community;

(g) The right of the Association to close or limit the use of the Common Elements for the minimum amount of time necessary to maintain, repair, and make replacements in the Common Elements; and

(h) The Development Rights and/or Special Declarant Rights reserved in this Declaration.

Section 4.2 **Limited Common Elements**. Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements (if any) appurtenant to such Owner's Lot. When a Limited Common Element is appurtenant to more than one (1) Lot, the Owners of the Lots to which it is appurtenant shall share the exclusive right to use and enjoy such Limited Common Element, and shall have no right to exclude the Owner of the other Lot or its Permittees from the use of such Limited Common Element.

Section 4.3 **Use of Common Elements**.

(a) The Common Elements may not be conveyed or encumbered except as permitted under the Act. Nevertheless, a grant of a permit, license or easement for purposes consistent with this Declaration and the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed to be a conveyance or encumbrance. Furthermore, subject to applicable provisions of the Act and upon action of the Board, the ownership of any Common Element and/or the responsibility for maintaining and operating any Common Element, including, without limitation, the roadways within the Community, may be conveyed and/or turned over to a quasi-governmental or governmental entity, including any special district or metropolitan district formed in accordance with Colorado law (a "**District**"), which is willing to accept and assume the same upon such terms and conditions as the Board shall deem to be appropriate.

(b) All of the Owners shall have the non-exclusive right to the use of all of the General Common Elements, including all those described in this Declaration, the Plat, and the PUD Plan, including, without limitation, the Amenities, subject to the right of the Association to promulgate Rules and Regulations governing the use of the General Common Elements and/or the Amenities.

(c) Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have no obligation whatsoever to construct any of the Amenities described in the Governing Documents, and under no circumstance shall any provision thereof be deemed or construed to be a covenant by Declarant to construct any such Amenities.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 5.1 **Membership**. Every Owner of a Lot shall be a Member of the Association and shall remain a Member for the period of the Owner's ownership of a Lot in the Community. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall be entitled to one (1) vote to be exercised by the Owner or Owners thereof. Notwithstanding anything to the contrary contained in this

Declaration, the Association shall not vote in the affairs of the Association by virtue of its ownership of any Real Estate.

Section 5.2 **Executive Board.**

(a) The affairs of the Association shall be managed by the Board consisting of the number of members set forth in the Articles of Incorporation or Bylaws, as the same may be amended from time to time. The Board may create committees for the purpose of carrying out some of its management responsibilities, provided that the delegation by the Board of any of its responsibilities to a committee shall not be deemed to relieve the Board of such responsibilities.

(b) The Board may authorize and pay for as a Common Expense the reimbursement of Board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of owners' associations. The course content of such educational meetings and seminars shall be specific to Colorado and shall make reference to the applicable sections of the Act.

(c) From the date of formation of the Association until the termination of the Declarant Control Period as provided below, Declarant shall have the right to appoint and remove the members of the Board as set forth in Section 5.3.

Section 5.3 **Declarant Control Period.** The "Declarant Control Period" shall terminate upon the first to occur of (a) sixty (60) days after conveyance to Owners other than a Declarant of seventy-five percent (75%) of the Lots that may be created; (b) two (2) years after the last conveyance of a Lot by a Declarant in the ordinary course of business; or (c) two (2) years after Declarant's right to add Lots to the Community was last exercised. During the Declarant Control Period, Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Declarant Control Period, but in that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than a Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33.3%) of the members of the Board shall be elected by Owners other than a Declarant. Not later than the termination of the Declarant Control Period, the Owners shall elect an Board of at least three members, at least a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than a Declarant. After termination of the Declarant Control Period, for as long as Declarant owns a Lot(s) in the Community, it shall have the right to appoint a minority of the members of the Board. The Board shall elect the officers of such board. The Board and officers shall take office upon election. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held by or controlled by Declarant, including, without limitation, those items specified in Section 303(9) of the Act.

**ARTICLE VI
THE ASSOCIATION**

Section 6.1 **Management and Maintenance Duties**. Subject to the rights and obligations of the Owners as set forth in this Declaration, the Association shall:

(a) Be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements and all other property owned by the Association.

(b) Maintain all grass, gardens, trees, shrubbery, flowers and other landscaping constituting a part of the Common Elements and all property owned by the Association.

(c) Maintain all grass, gardens, trees, shrubbery, flowers and other landscaping located within the boundaries of the Garden Home Lots.

(d) Perform snow removal and trash removal over the Common Elements.

(e) Maintain and repave, as necessary, all internal roads in the Community.

(f) Construct, manage, control, maintain, repair, replace, and improve the Off-Site Facilities, and obtain and maintain all permits required by law for the same.

(g) Perform the obligations of grantor under the Conservation Easement Agreement (unless and until such time as the grantor thereunder or a third party assumes such obligations), including, without limitation:

(1) conducting noxious weed treatments in the Conservation Easement Area;

(2) maintaining, repairing, and replacing all trails and related easements existing upon the Conservation Easement Area;

(3) paying all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Area;

(4) paying monthly to RFC the annual stewardship fee (the "**Stewardship Fee**") required by the Conservation Easement Agreement;

(5) maintaining the detention pond to be installed by Declarant within the Conservation Easement Area;

(6) installing and maintaining signage on the Real Estate adjacent to the Conservation Easement Area at such points of actual or potential public access with signs identifying the Conservation Easement Area as being protected by the Conservation Easement Agreement;

(7) erecting and maintaining fences and/or other barriers on the Real Estate or within the Conservation Easement Area at such points of actual or potential public access to discourage any form of unauthorized access and trespass upon the Conservation Easement Area, which posting and fencing/screening shall be approved by RFC; and

(8) maintaining the screening, planting, and vegetation required by the Conservation Easement Agreement to screen, buffer and protect the Conservation Easement Area from the impacts of surrounding development.

(h) Perform the obligations of grantor under the RFTA Open Space Easement Agreement (unless and until such time as the grantor thereunder or a third party assumes such obligations).

(i) If, at any time in the future, rail use is restored in the RFTA ROW, the Association shall be required to construct and maintain a minimum six foot (6') fence where necessary along the boundary of the RFTA ROW and the Real Estate, at a location to be mutually agreed upon by the Association and RFTA.

Notwithstanding anything to the contrary contained above or elsewhere in this Declaration, subject to applicable provisions of the Act and upon action of the Board, the ownership of any Common Element and/or the responsibility for maintaining and operating any Common Element may be turned over to a quasi-governmental or governmental entity, including any District formed in accordance with Colorado law, which is willing to accept and assume the same upon such terms and conditions as the Board shall deem to be appropriate.

Section 6.2 **Common Expenses.** The expenses, costs, and fees of such management, operation, maintenance, repair, replacement, and improvement by the Association, as provided in Section 6.1, shall be part of the Common Expenses payable as Regular Assessments levied by the Association; provided that the Association may levy the costs and expenses associated with maintaining, repairing, and replacing fixtures, equipment, utilities, and other Limited Common Elements that are appurtenant to an individual Owner's Lot or that provide exclusive service to an individual Owner's Lot, and any service lines from such fixtures, equipment, utilities, or other Limited Common Elements to the subject Lot, against the Owner of the subject Lot ("**Individual Purpose Assessment**"). Except for the Owners' right to reject a budget as described in Section 7.7, the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. Each Owner shall provide to the Association, and its agents, contractors, or employees, access through such Owner's Lot as may be reasonably necessary for maintenance, repair, and replacement of the Common Elements. If any portion of the Common Elements or a Lot is damaged or destroyed in connection with such access or such maintenance, repair, or replacement, the party causing or responsible for the damage or destruction is liable for the cost of prompt repair of such damage or destruction.

Section 6.3 **Owner's Failure to Maintain; Prohibition of Certain Activities.** Notwithstanding anything to the contrary contained in this Declaration, if the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, or by an Owner's Permittees, or as a result of any Improvement constructed by or on behalf of an Owner in or upon the

Common Elements, then the expenses, costs, and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner; and if not repaid to the Association within ten (10) days after the Association has given written notice to the Owner of the total amount of such expenses, costs, and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a Default Assessment (as defined herein) determined and levied against such Owner and its Lot.

(a) Each Owner shall be responsible for the maintenance, repair, and replacement of his or her own Lot, all Improvements and personal property comprising or located within such Lot, and the cleaning and maintenance of any non-structural components of the Limited Common Elements appurtenant to such Lot. If an Owner fails to perform any cleaning, maintenance, repair, or replacement that is the Owner's responsibility under this Declaration, and such failure has not been cured within thirty (30) days after written notice has been given to such Owner by the Association, the Association may perform the cleaning, maintenance, repair, or replacement, and all charges incurred by the Association in connection therewith, together with an administrative fee in the amount of twenty-five percent (25%) of such cost, shall be the personal obligation of the Owner and may be levied as a Default Assessment against such Owner and its Lot. The Association and its agents, contractors and representatives hereby have an easement for access to each Lot and the Common Elements for the purpose of exercising its rights under this Subsection (a).

(b) Nothing shall be done or kept in any Lot or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same or this Declaration, the Conservation Easement Agreement, or any Rule or Regulation or Policy of the Association. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner or Owner's Permittee. Each Owner shall indemnify and hold Declarant, the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by such Owner or Owner's Permittee, which is in violation of this Section 6.3. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), then, after affording an Owner a reasonable opportunity to be heard by the Board, the amounts to be indemnified shall be and constitute a Default Assessment determined and levied against the Owner's Lot.

(c) No modifications may be made to any of the Common Elements by any Owner, other than Declarant, without the prior written consent of the Board. The Board may require an Owner to submit drawings, plans, specifications, engineering reports, and other information as the Board may deem to be appropriate, in connection with any request for Board approval of a modification to any of the Common Elements, which approval may be denied, granted, or granted with conditions, in the sole discretion of the Board.

Section 6.4 **Cooperation with Other Associations**. The Association shall have the right and authority at any time, from time to time, in its discretion, to enter into agreements including, without limitation, reciprocal easement, amenities access and cost sharing agreements to permit the provision of access and use of Amenities by neighboring communities and otherwise cooperate with other community associations or owners or tenants of commercial or

residential property near the Community (collectively, "**Other Associations**") (a) to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters that benefit the Association and such Other Associations; (b) to perform maintenance, repair, or replacement for any other persons, including, without limitation, Other Associations in consideration of payment or reimbursement therefor; (c) to utilize the same contractors, subcontractors, managers, or others employed by Other Associations to perform services for the Association; (d) to share community amenities and the costs of maintaining the same; and (e) otherwise to cooperate with any Other Associations in order to increase consistency or coordination between such Other Associations and the Association as to matters affecting both, reduce Common Expenses, or as may otherwise be deemed appropriate or beneficial by the Board in its reasonable discretion from time to time. The costs and expenses incurred in connection with any such agreements with Other Associations shall be shared or apportioned between the Association and the applicable Other Association as the Board may determine in its discretion from time to time and all such costs to the Association under such agreements and cooperation shall be Common Expenses. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any Other Association to collect assessments, other charges, or other amounts that may be due to such entity and to permit any such entity to collect assessments, other charges, or other amounts that may be due to the Association. In any such instance, the Association shall provide for remittance to such Other Association of any amounts collected on its behalf by the Association and for remittance to the Association of any amounts collected on its behalf by such Other Association.

Section 6.5 **Management Agreements and Agreements with Declarant.** The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions or duties, as provided in the Bylaws; provided, however, that any such delegation shall not relieve the Association of its responsibility under this Declaration and, provided further, that any such contract shall provide for termination with or without cause and without penalty by the Association, upon not less than ninety (90) days notice to the other party. The Manager shall not have the authority to make expenditures except as directed by the Board.

Section 6.6 **Right to Notice.** Pursuant to Section 205(1)(o) of the Act, or whenever the Governing Documents require that an action be taken after notice, and at any other time the Board determines, the Owners have the right to receive written notice ("**Notice**") of the proposed action. Further, any Owner may give Notice to the Owners of any matter affecting the Community. Notice shall be given to each Owner in writing, delivered personally or by mail to each Owner at such address as appears in the records of the Association, or Notice shall be published in a newsletter or similar publication that is routinely circulated to all Owners. The Notice shall be given not less than three (3) days before a proposed action is to be taken or Notice may be posted in a conspicuous place in the Community. The Notice may, but is not required to, invite comment to the Board or an Owner before the scheduled time of any meeting.

Section 6.7 **Duty to Accept Real Estate and Improvements from Declarant.** Subject to Section 305 of the Act, the Association shall accept title to any real property, including any Improvements thereon, and personal property transferred to the Association by Declarant, together with the responsibility to perform any and all Administrative Functions associated therewith, provided that such property and Administrative Functions are not

inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, and such easements, covenants, conditions, restrictions and equitable servitudes or other encumbrances of record. The property or interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the normal burdens of ownership of property.

Section 6.8 **Power to Grant Easements.** The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Common Elements and other property owned by the Association for any lawful purpose, including, without limitation, the provision of emergency services, utilities (including, without limitation, water, sanitary sewer, storm sewer, gas and other energy services), telephone, cable television, fiber optic and other telecommunication services, and other uses or services to some or all of the Owners.

Section 6.9 **Power to Exchange Services with Districts.** The Association may use and/or exchange services with any District in the furtherance of their respective obligations and may cooperate with any District to enable the Association and any District to provide their respective services to Owners most efficiently and economically. The Association may contract with any District to better provide for such cooperation.

Section 6.10 **Conveyance or Encumbrance of Common Elements.** Subject to Section 302 of the Act and Article XV of this Declaration, the Association may acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property.

Section 6.11 **New Additions to Common Elements.** The Association shall have the right to cause additional Improvements, including new additions and/or capital improvements, be made as a part of or to the Common Elements. The Common Expenses for any such additions and capital improvements to the Common Elements shall be apportioned among all Lots as provided in Article VII hereof.

Section 6.12 **Other Contracts, Licenses, and Agreements.** The Association, through its Board, shall have the right to enter into, make, perform, or enforce contracts, leases, licenses, agreements, easements, and/or rights-of-way, for the use by Owners and their Permittees, of real property for pedestrian and vehicular access, ingress and egress to and from the Community, or any portion thereof, for vehicular parking, for on-site residential management, or for recreational use, all of which shall be terminable by either party, with or without cause, upon ninety (90) days' prior written notice; and contracts, licenses, leases, or other agreements, including a Bulk Services Agreement, for the provision of cable or satellite television service to the Community, or any portion thereof, so long as the foregoing do not exceed twenty (20) years in duration from the commencement of such satellite or cable television service. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Board, which may include provisions by which the Association covenants and

agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the Improvements thereto and thereon, providing such cable or satellite television service, or other amounts which the Board determines are necessary to secure such contracts, licenses and agreements. The Association shall treat any such costs and expenses as Common Expenses pursuant to Article VII hereof.

Section 6.13 **Owner Education**. The Association shall provide or cause to be provided, education to Owners at no cost to the Owners on a least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and the Board under Colorado law. The criteria for compliance with this Section 6.13 shall be determined by the Board.

Section 6.14 **Books and Records of the Association**. The Association shall keep its books and records in the manner set forth in the Bylaws.

Section 6.15 **Rules and Regulations**.

(a) The Board may promulgate, modify, rescind and enforce, including, without limitation, enforcement by levying and collecting charges and fines for the violation thereof after affording an Owner a reasonable opportunity to be heard, reasonable rules and regulations governing the use of the Lots and Common Elements ("**Rules and Regulations**"), which Rules and Regulations shall be consistent with the rights and duties established in this Declaration.

(b) The Association shall adopt such additional Rules and Regulations and Policies as may be required by the Act from time to time and as set forth more specifically in the Bylaws.

Section 6.16 **Neighborhood Center**. Declarant, in its sole and absolute discretion, and the Association, upon the termination of the Declarant Control Period, may provide certain recreational, health, and social facilities, and Community Service Space(s), within the Neighborhood Center for the use and benefit of Owners and Owners' Permittees and other persons authorized from time to time by Declarant or the Association to access and use the Neighborhood Center, including, without limitation, a Community Service Tenant. The facilities may include, without limitation, meeting room(s), a fitness room, offices, a kitchenette, restrooms, indoor and outdoor recreational facilities, and Community Service Space(s); provided, however, that Community Service Spaces shall only be used for Community Service Uses. Declarant, in its sole and absolute discretion, and the Association, upon the termination of the Declarant Control Period, may also, but is not required to, establish an Amenities Fund (hereinafter defined) for the construction of additions to the Neighborhood Center and construct of such Amenities determined by Declarant and/or the Association to be desirable and in the best interest of the Community; provided, however, that Declarant and/or the Association shall have no obligation whatsoever to establish such fund or construct additions to the Neighborhood Center or any of the Amenities described in this Declaration or the PUD Plan. In the event Declarant desires to construct an addition to the Neighborhood Center or any other Amenities, the location, design, timing, kind, value and nature of the same shall be determined by Declarant in the exercise of its sole discretion, and Declarant reserves the right to increase or add to such

facilities or to expand or enlarge the facilities, without the consent of the Owners, Mortgagees, or the Association. Notwithstanding any other provisions of this Declaration, until the termination of the Declarant Control Period, Declarant shall have the right to:

(a) Use the Neighborhood Center, or a portion thereof, for office or sales or professional purposes or functions;

(b) Impose a fee or charge for the use and enjoyment of the Neighborhood Center and any Amenities;

(c) Lease, grant concessions or exclusive use agreements, or to contract with others to provide programs or services within such facilities for the benefit of Owners, Owners' Permittees, the Community Service Tenants and such other persons as the Association may authorize to use the same from time to time.

(d) Authorize and permit persons who are not Owners or Owners' Permittees, including, without limitation, Community Service Tenants or private, charitable, or professional organizations, to use the Neighborhood Center and any Amenities, and to charge such fees and charges payable to the Association, as Declarant or the Association may determine to be appropriate from time to time, in their discretion.

Upon termination of the Declarant Control Period, the Association shall have the rights set forth in Subsections (a) through (d), above.

Section 6.17 **General Powers**. The Association shall have all powers available to it under the Act or Colorado law to govern the Community and otherwise to fulfill its purposes including, without limitation, the power to borrow money and to pledge, mortgage, hypothecate, and convey its properties and the Common Elements (as permitted herein).

ARTICLE VII ASSESSMENTS

Section 7.1 **Personal Obligation for Assessments**. All Owners covenant and agree, and shall be personally obligated, to pay to the Association all of the following Assessments which are defined and described in this Article VII: (i) "**Regular Assessments**" (hereafter defined) imposed by the Association to meet the Common Expense and reserve requirements pursuant to Section 7.2 of this Declaration; (ii) "**Special Assessments**" (hereafter defined), pursuant to Section 7.3 of this Declaration; (iii) Individual Purpose Assessments, including fines, pursuant to Section 7.4 of this Declaration; (iv) other charges, costs, interest, fees, and assessments, including, without limitation, Assessments relating to defaults, acts, errors or omissions of an Owner or Owner's Permittees, as provided in this Declaration ("**Default Assessments**"). If any Lot is owned by more than one person or entity, all such Owners of such Lot shall be jointly and severally liable to the Association for the payment of all Assessments, charges, costs, fines, interest and fees attributable to their Lot. The payment of any and all Assessments is an independent covenant, with all Assessments payable in full, when due, without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The personal obligation for delinquent Assessments shall not pass to an Owner's successor in title or interest unless assumed by such successor. No Owner may

waive or otherwise escape personal liability for the payment of the Assessments, charges and fees provided for herein by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of the Owner's Lot. In addition to the foregoing Assessments, charges and fees, each Owner shall have the obligation to pay any taxes, assessments, fees or other charges levied by a District against the Owner's Lot, as well as all charges for separately metered utilities servicing the Owner's Lot. The charges for utilities that are not separately metered to an individual Lot by the applicable utility company may be collected by the Association as part of the Regular Assessments; however, the charges for such utilities shall be allocated among the Lots based on actual usage, if such is measured.

Section 7.2 **Regular Assessments.** The initial Assessments shall commence not later than thirty (30) days after the first sale of a Lot within the Real Estate to a purchaser other than Declarant. After any Assessment has been made by the Association, a Regular Assessment ("**Regular Assessments**") against Lots within the Real Estate shall be due and payable on the first day of each month, in advance, or on such other dates, as may be set by the Board from time to time. Any person purchasing a Lot between Regular Assessment due dates shall pay a pro rata share of the last Regular Assessment due. The amount of the Regular Assessment shall be determined by the Board based on the Budget adopted from time to time by the Association (but no less frequently than annually) as set forth in Section 7.7 below. Without limiting the generality of the foregoing, the Stewardship Fee shall be paid by all Owners (except for Owners of the Affordable Lots) through a line item assessment assessed to and collected from such Owners as a component of their Regular Assessment.

Section 7.3 **Special Assessments.** In addition to the Regular Assessments authorized above, the Board may, at any time, determine, levy, and assess a special assessment ("**Special Assessment**") for the purpose of defraying, in whole or in part, payments for any operating deficit, loss or unbudgeted expense, and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Common Elements, including, without limitation, any fixtures and personal property related thereto. Special Assessments shall be based on a budget adopted in accordance with Section 7.7; provided, however, that if necessary, the Association may adopt a new, supplemental Budget for payment of increased Regular Assessments pursuant to Section 7.7 prior to levying a Special Assessment. Such Special Assessment(s) shall be due and payable as determined by the Board, with at least thirty (30) days' prior written notice provided to the Owners.

Section 7.4 **Individual Purpose Assessments.**

(a) In addition to the Regular, Special, and Default Assessments, the Board may at any time and from time to time determine, levy, and collect Assessments against any one or more, but fewer than all, of the Lots, for any matters applicable only to such Lots ("**Individual Purpose Assessments**"). Without limiting the generality of the foregoing, such Individual Purpose Assessments may be levied for the following purposes: (i) expenses incurred as a result of the maintenance, repair or replacement of Limited Common Elements appurtenant to a specific Lot; (ii) any increased cost of insurance based upon risk which shall be assessed to a Lot in proportion to the risk; (iii) the expenses incurred by the Association in providing a special service to any Owner or Lot beyond what is required of the Association by this Declaration; and

(iv) any expense specifically caused by the actions or inactions of any Owner which violate any of the provisions of the Governing Documents, including, without limitation, fines levied against the Owner or its Permittees. The Individual Purpose Assessments may be levied to pay or reimburse the Association for any costs, expenses, fees, reserves, and other charges, incurred or reasonably anticipated to be incurred by the Association, for management, control, administration, maintenance, repair, replacement, and improvement, or any other purpose with respect to any matter pertaining to one or more, but fewer than all, of the Lots.

(b) The amounts determined, levied, and assessed pursuant to this Section 7.4 shall be due and payable as determined by the Board, provided that written notice setting forth the amount of the Individual Purpose Assessment for each Lot and the due date for payment thereof shall be given to the Owner of the affected Lot not less than thirty (30) days prior to the due date.

Section 7.5 Allocation of Common Expenses.

(a) Except as otherwise expressly provided in this Declaration, all Assessments (including Regular Assessments and Special Assessments, but excluding Individual Purpose Assessments and Default Assessments as hereafter provided) shall be allocated among the Lots in accordance with the General Assessment Percentages set forth in Exhibit C (provided that any approved, combined Lot shall be treated as the sum of the General Assessment Percentages of its constituent Lots for the purpose of calculating its share of Assessments) by multiplying the total annual amount of Common Expenses by the applicable General Assessment Percentage for each Lot. Notwithstanding the foregoing, consent shall not be required from the Association, the Board, or any other person for Declarant to reallocate the General Assessment Percentages, in accordance with the formula set forth in Exhibit C, upon Declarant's exercise of any Development Right and/or Special Declarant Right, and any amendment to this Declaration or the Plat that is required to implement such reallocation may be executed solely by Declarant.

(b) To the extent any Common Expense relating to the General Common Elements disproportionately benefits any Owner or group of Owners, the Board may adjust the Assessment for such Common Expense in such proportion as may be appropriate; provided, however, the expenses and costs associated with Subsection 6.1(c) shall be allocated among the Lots in accordance with the General Assessment Percentages. The Board, with the assistance of any company providing insurance for the benefit of the Owners under Article VIII, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article VIII hereof. In addition, the Board by majority vote may allocate costs for consumption of common utilities (such as heating, cooling, trash removal, water and sewer charges) among the users thereof in the event of disproportionate consumption of any such common utility by an Owner, and the Board may allocate such costs based upon any reasonable method of determining relative usage of such utilities, including, without limitation, by engineering analysis. The total annual Assessments shall be apportioned among all Lots as provided in this Section 7.5.

Section 7.6 Exempt Property. Notwithstanding anything to the contrary in this Declaration, the Affordable Lots and the Owners thereof shall be exempt from payment of

Regular Assessments and Special Assessments; provided, however, that Individual Purpose Assessments and/or Default Assessments may be levied against Affordable Lots and the Owners thereof.

Section 7.7 **Budgets.**

(a) The Board shall prepare annually a proposed budget for payment of the Common Expenses for the upcoming fiscal year ("**Budget**"), to provide for the payment of all estimated expenses, costs and fees for the duties described in Section 6.1 of this Declaration, and for other costs, fees and expenses, related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration and Improvement, the Common Elements, real or personal property owned by the Association and any other obligations undertaken by the Association. The amount of said Budgets may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of the Common Elements; common lighting and heating; operation, regulation, maintenance, repair, replacement and renovation of the Common Elements; wages; charges for utilities, including providing electrical power to the Common Elements; taxes, legal and accounting fees; management fees; costs, expenses and liabilities incurred by the Board on behalf of the Owners or otherwise arising under or by reason of the Governing Documents; the creation of reasonable reserves, working capital and/or sinking funds; reimbursement for or payment of any operating deficit, loss, or unbudgeted expense incurred by the Association; and any and all other costs and expenses relating to the Common Elements, real or personal property owned by the Association.

(b) Within ninety (90) days after adoption of any proposed Budget, the Board shall mail, by ordinary first-class mail or by hand delivery, a summary of the Budget to all Owners and shall set a date for a meeting of the Owners to consider the Budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The Budget proposed by the Board shall not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by at least eighty-percent (80%) of the total voting power of the Association, whether or not a quorum is present. If the proposed Budget is vetoed, the applicable periodic Budget last ratified by the Owners shall be continued until such time as the Owners do not veto a subsequent Budget proposed by the Board.

(c) The Board shall levy and assess Regular Assessments and Special Assessments in accordance with the annual Budget or any supplemental budget.

(d) Notwithstanding any provision of this Declaration to the contrary, the Board may, upon a vote of Owners holding sixty seven percent (67%) of the eligible votes in the Association, simplify the budgeting procedures set forth herein; provided that budgeting procedures shall at all times comply with the requirements of the Act.

Section 7.8 **Reserves.** The Association shall establish an adequate reserve fund for the maintenance, repair, and replacement of those Common Elements that must be periodically maintained, repaired, or replaced and for payment of insurance deductibles. Such reserves shall be included in the Budget and shall be funded through the Regular Assessments.

Section 7.9 **Rate of Assessment.** Both Regular Assessments and Special Assessments shall be fixed at such rates as shall be sufficient to meet the advance Budgets of the Association.

Section 7.10 **Lien for Assessments.**

(a) Under the Act and subject to its limitations, the Association has a statutory lien on a Lot for any Assessments levied against that Lot and for fines imposed against its Owner from the time each Assessment or fine becomes due, but not on the Community as a whole. In addition, fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to this Declaration or the Act are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration; (ii) a lien of a First Mortgage that was recorded before the date on which the Assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot.

(c) Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the Assessments, based on the Budget, that would have become due, in the absence of any acceleration, during the six (6) months immediately prior to the date that an action or a non-judicial foreclosure either to enforce or extinguish the statutory lien has been initiated by either the Association or any party holding a lien senior to any part of the Association lien.

(d) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or Assessment is required; provided, however, a claim of lien may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim of lien shall be assessed against the Owner and his or her Lot as a Default Assessment.

Section 7.11 **Effect of Non-Payment of Assessments.**

(a) Any Assessments, charges, costs or fees provided for in this Declaration, including, without limitation, any Default Assessment arising under any provision of this Declaration, that are not fully paid within ten (10) days after the due date thereof, shall bear interest from the due date at the rate of the lesser of (i) twenty-one percent (21%) per annum, or (ii) the maximum rate permitted by law. In addition, the Association may assess a late charge equal to the greater of five percent (5%) of the monthly payment or fifty-dollars (\$50.00), or at such other rate as may be set by the Association from time to time. All interest due and late fees shall be added to and deemed to be Assessments hereunder. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges, costs or fees, and may also proceed to foreclose its lien against such Owner's Lot in the manner of a mortgage upon such property. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments,

charges, costs or fees, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor.

(b) If any such Assessment, charge, cost or fee, is not fully paid when due, and the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against an Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Lot, then all unpaid Assessments, charges and fees, any and all late charges and accrued interest under this Section 7.11, the Association's costs, expenses, and attorneys' fees incurred in collection efforts, and the Association's costs of suit, expenses and attorneys' and other professional fees incurred for any such action and/or foreclosure proceedings, and any other costs which may be authorized by a court of competent jurisdiction shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, charges, costs or fees, which are not fully paid when due.

(c) The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect Assessments or to foreclose a lien for unpaid Assessments, the Association shall be entitled to have a receiver appointed for the Owner's Lot to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The receiver shall have the right to collect any rents paid in connection with the use of such Owner's Lot. The Court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

Section 7.12 **Successor's Liability for Assessments**. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Lot shall not affect the lien for Assessments, charges, costs or fees levied hereunder, except that sale or transfer of a Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Assessments, but not the personal obligation of the Owner for the payment of Assessments, that became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, except to the extent the lien of the Association has priority over the First Mortgage under Section 7.10 above. Any such Assessments, charges, costs, or fees that are extinguished as provided herein may be reallocated and assessed to all Lots in accordance with the formula set forth in **Exhibit C**. A First Mortgagee may be personally liable for any unpaid Assessments, charges, costs, or fees, or portion thereof, accruing against a Lot prior to the time a First Mortgagee takes title to such Lot, but only to the extent that the lien of the Association has priority over the First Mortgage under Section 7.10 above. Notwithstanding the foregoing, a First Mortgagee shall be responsible for the payment of Assessments, charges, costs, or fees that accrue against a Lot subsequent to a First Mortgagee's obtaining title to such Lot. No sale, transfer, foreclosure or any proceeding in lieu thereof, shall relieve any Owner from liability for any Assessments, charges, costs or fees, or any portion thereof, accrued during the period of such Owner's ownership of the Lot. No Owner shall have personal liability for

Assessments assessed with respect to a Lot that become due prior to the time he acquired title to such Lot, unless such Owner expressly assumes such liability in writing.

Section 7.13 **Homestead Waiver**. The Association's lien on a Lot for Assessments, charges, costs, and fees, provided for herein, shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Lot, including a deed in lieu of foreclosure, shall constitute a waiver of the homestead exemption against all such Assessments, charges, costs, and fees.

Section 7.14 **Working Capital Fund**. The Association or Declarant may require the first Owner of each Lot (other than Declarant) to make at the time of purchase, a non-refundable contribution to the Association in an amount equal not to exceed three (3) months of the Regular Assessment against that Lot in effect or proposed at the closing thereof, which sum shall be held by the Association as a working capital fund (the "**Working Capital Fund**"). Amounts paid into the Working Capital Fund shall not be considered as advance payments of Regular Assessments. Funds in the Working Capital Fund shall be segregated with other such funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property, or services. Contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Notwithstanding the foregoing, no Owner of an Affordable Lot and no First Mortgagee who becomes an Owner through foreclosure or acceptance of a deed in lieu thereof shall be required to make a payment to the Association for the Working Capital Fund, and no Owner whose Lot has been foreclosed upon or transferred to a First Mortgagee by a deed in lieu of foreclosure shall be entitled to a credit from the First Mortgagee for any unused portion of the Working Capital Fund. Declarant shall not use any of the Working Capital Fund to defray its own expenses or construction costs.

Section 7.15 **Establishment of Other Funds**. The Association may, but shall not be required to, establish other funds as and when needed, including, without limitation, a fund for the construction of Amenities (an "**Amenities Fund**") determined by the Association to be desirable and in the best interest of the Community and/or a fund to reimburse Declarant, in part or in whole, for the capital expense of constructing Off-Site Facilities and potable water, raw water, and sanitary sewer infrastructure and facilities within the boundaries of the Community. Declarant also shall have the right, in its sole and absolute discretion, to establish an Amenities Fund in lieu of constructing any Amenities; provided, however, that Declarant shall have no obligation whatsoever to establish such fund or construct any of the Amenities described in this Declaration or the PUD Plan. Nothing herein shall limit, preclude or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

Section 7.16 **Statement Regarding Assessments**. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee upon written request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of any unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association,

the Board, and every Owner. If no statement is furnished to an inquiring Owner or holder of a Security Interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments that were due as of the date of the request. The Board may establish a reasonable fee to be paid in connection with the furnishing of a statement regarding Assessments, which fee shall be paid at the time such statement is provided to the party requesting the statement.

Section 7.17 **Assignment of Assessments.** The Association may, in its reasonable discretion, assign its rights to future income, including, without limitation, its right to collect Assessments as security for the repayment of the indebtedness from any commercially reasonable loan agreement into which it enters.

ARTICLE VIII INSURANCE

Section 8.1 **Association Insurance and General Terms.** The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible companies duly authorized and qualified to do business in the State of Colorado. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, policies for insurance described in this Article VIII with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation (to the extent reasonably available) and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days prior written notice to the Association.

(b) All liability insurance shall be carried in blanket form naming Declarant, the Association, the Board, the District (if any), the Manager (if any), and the officers and directors of the Association as insureds.

(c) The cost of all insurance premiums and deductibles shall be passed through to all Owners (except for the Owners of Affordable Lots) as part of the Regular Assessment.

Section 8.2 **Association Hazard Insurance on the Common Elements.** The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Elements and the other property owned by the Association, except to the extent that the Board reasonably determines that carrying such insurance would be uneconomical.

Section 8.3 **Association Liability Insurance.** The Association shall obtain an adequate comprehensive policy of public liability and property damage liability insurance, in such limits as the Board may from time to time determine, but not in any event less than \$2,000,000 per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for

personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. The District (if any) may be an additional named insured.

Section 8.4 **Association Fidelity Insurance.** The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 8.5 **Association Worker's Compensation and Employer's Liability Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 8.6 **Association Officers' and Directors' Personal Liability Insurance.** The Association shall obtain a broad or expansive form of an officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 8.7 **Other Insurance of the Association.** The Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 8.8 **Manager Insurance.** The Manager, if not an employee, shall be insured for the benefit of the Association in amounts and with an insurance company acceptable to the Board, which insurance shall include, without limitation, fidelity insurance for the Manager and its employees handling Association funds, and shall maintain and submit evidence of such coverage to the Association.

Section 8.9 **Waiver of Claims Against Association.** As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 8.10 **Adjustments by the Association.** Any loss covered by an insurance policy described in Sections 8.1 through 8.9 above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association. The Association shall hold any insurance proceeds in trust for the Association and Owners.

Section 8.11 **Eminent Domain and Hazard Insurance Allocations and Distributions.** In the event of a distribution of eminent domain proceeds or hazard insurance proceeds to the Owners, the distribution shall be made pursuant to C.R.S. 38-33.3-107 and 38-33.3-313 respectively.

Section 8.12 **Association Insurance as Primary Coverage.** If at the time of any loss under any policy that is in the name of the Association, there is other insurance in the name of any Owner, and such Owner's policy covers the same property or loss, or any portion thereof, that is covered by such Association policy, such Association policy shall be the primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of such Owner and for reimbursement to the Association for the deductible under the Association's insurance policy; provided that if such amount(s) are not repaid to the Association within ten (10) days after the Association gives notice to the Owner of the total of such amount(s), from time to time, then the failure to so repay shall automatically become a Default Assessment determined and levied against such Lot and Owner.

Section 8.13 **Prohibition of Increases in Insurable Risks.** Without the prior written approval of the Association, nothing shall be done or kept in any Lot or in or on the Common Elements, or any part thereof, that would result in the cancellation of any insurance on the Common Elements, or any part thereof, or increase in the rate of any insurance on the Common Elements, or any part thereof, over such rates that the Association, but for such activity, would pay. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by the members of the Owner's family and/or such Owner's guests, invitees, or attendants that is in violation of this Section 8.13. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then, after affording an Owner a reasonable opportunity to be heard, the Association shall enforce the resulting indemnified amount as a Default Assessment determined and levied against the Owner's Lot.

Section 8.14 **Insurance Required by Conservation Easement Agreement.** Unless and until such time as the grantor under the Conservation Easement Agreement or a third party assumes the grantor's insurance obligations under such agreement, the Association shall:

(a) Maintain commercially reasonable liability insurance coverage for the Conservation Easement Area, including for all trails and related easements existing upon the Conservation Easement Area, naming RFC as an additional insured.

(b) Maintain commercially reasonable liability insurance coverage for the property subject to the RFTA Open Space Easement Agreement.

(c) Maintain or require its agents, consultants and contractors who conduct any activity on the Conservation Easement Area to carry not less than \$1,000,000 comprehensive general liability insurance with contractual liability endorsement that insures Grantor's Indemnity Obligations (as such term is defined in the Conservation Easement Agreement), and, upon request of RFC, shall provide RFC written evidence of the same. RFC shall be named an additional insured on such insurance.

ARTICLE IX MECHANIC'S LIENS

Section 9.1 **Mechanics' Liens**. Subsequent to the recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Lot with the consent of or at the request of the Owner of the Lot or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners, Declarant and the Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Lot against the Lot of another Owner, the Common Elements, or any part thereof.

Section 9.2 **Enforcement by the Association**. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper) the Association shall enforce the indemnity provided by the provisions of Section 9.1 above by collecting from the Owner of the Lot on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Lot on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Lot, and enforceable by the Association in accordance with Section 7.1 above.

ARTICLE X EASEMENTS

Section 10.1 **Recorded Easements**. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Real Estate, and all portions thereof, shall be subject to the easements, servitudes, covenants, conditions and restrictions set forth in the Declaration and as shown on the Plat, or any portion thereof. Further, the Real Estate, or portions thereof, is now or may hereafter be subject to the easements, licenses, and other recorded documents set forth on **Exhibit E** attached hereto and incorporated herein by this reference.

Section 10.2 **Encroachments**. If any portion of the Common Elements encroaches upon any Lot(s) or if any Improvement on a Lot encroaches upon any other Lot or upon any portion of the Common Elements, or if any encroachment occurs in the future as a result of: (a) shifting, settling, or other movement of any part of any Improvement on the Common Elements; (b) alteration, reconstruction, or repair to the Common Elements; or (iii) repair or restoration of part of any Improvement after damage by fire or other casualty, or condemnation or eminent domain proceedings, then a valid easement is hereby created and does exist for the encroachment and for the maintenance of the same so long as the encroachment exists, as long as the physical boundaries of the encroaching building or structure after the construction, reconstruction,

rebuilding, alteration, or repair, shall be in substantial accord with the description of those boundaries that appears in this Declaration. If any Improvements, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment is hereby created and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Lots for purposes of marketability of title or other purposes. This easement does not relieve an Owner of liability in case of willful misconduct nor relieve Declarant or any person of liability for failure to adhere to the Plat.

Section 10.3 **Emergency Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Real Estate in the proper performance of their duties.

Section 10.4 **Utilities.** Easements for utilities and other purposes over and across the Lots and Common Elements may be as shown upon a recorded plat, map or separate document and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 10.5 **Maintenance Easement.** An easement is hereby granted to the Association, its respective officers, directors, agents, employees, and assignees upon, across, over, in, and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, as the case may be, including the right of the Association to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.

Section 10.6 **Drainage Easement.** An easement is hereby granted to Declarant and the Association, its officers, agents, employees, successors, and assignees to enter upon, across, over, in, and under any portion of the Real Estate for the purpose of changing, correcting, or otherwise modifying the grade or drainage Improvements to improve the drainage of water on the Real Estate.

Section 10.7 **Easements for Repair, Maintenance, and Emergencies.** The Association, its agent, contractors, and representatives shall have an easement over, across, and through each Lot and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements or any utility lines or pipes (whether or not Common Elements) located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Lot, or for the performance of its other obligations under this Declaration. Subject to the provisions of Sections 6.1 and 6.3 hereof, damage to the interior of any part of a Lot resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repairs within any Lot at the instance of the Association, shall be an expense of all the Owners apportioned in accordance with Article VII. Damage to the interior part of any Lot resulting from the installation, movement, repair, emergency repair, removal, or replacement of any utility lines or pipes not servicing more than one Lot shall be the expense of the Owner whose Lot such utility

lines and pipes serve and such expense may be reimbursed through an Individual Purpose Assessment. Non-emergency repairs shall be made only during regular business hours on business days after 24 hours' notice to the occupants of the Lot wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergencies the occupants of the affected Lot shall be notified of impending entry as early as is reasonably possible.

Section 10.8 **Temporary Construction Easements.** Temporary construction easements are hereby reserved for the benefit of Declarant, for the purpose of construction of Improvements in the Community and to continue and complete the development of the Community. The temporary construction easements shall commence on the date this Declaration is recorded and terminate, unless extended by a vote of the Owners controlling fifty-one percent (51%) of the eligible votes in the Association, upon expiration of the Development Rights Period. If construction is commenced but has not been completed on any Lot or Common Element prior to expiration of the Development Rights Period, the temporary construction easement shall be in effect for two (2) years after commencement of construction.

Section 10.9 **Easements Deemed Created.** All conveyances of Lots hereafter made, whether by a Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

Section 10.10 **Declarant's Reservation of Rights in the Easements.** Declarant, for itself and any successor declarant, hereby reserves the right to use the easements set forth in this Article X (the "**Easements**") for the construction and improvement of the Easements and for all other uses not inconsistent with its Development Rights and Special Declarant Rights as set forth in Article XVI hereof and in the Act. Declarant reserves the right to relocate any Easement, at its sole cost and expense, from time to time, as may be necessary to conform the location of said Easement to the Plat and/or PUD Plan. The Association shall execute any and all documents that Declarant may reasonably require to acknowledge and confirm the relocation of the Easements. In addition, except as otherwise provided in this Declaration, Declarant reserves for itself, the Association, and the Owners the right to use and occupy the Easements for any purposes that do not interfere with or endanger any utility lines, fixtures, and devices and that do not obstruct the alleys, private roads, or access drives.

ARTICLE XI PERMITTED USES AND RESTRICTIVE COVENANTS

Section 11.1 **Permitted and Prohibited Uses.** The Real Estate shall be used only for uses permitted pursuant to the PUD Plan, this Declaration, and all governmental ordinances, laws and regulations, including, without limitation, attached and detached single-family residential uses, Community Service Uses (such uses being limited to the Community Service Space), passive and active recreational uses, open space, and Community Garden or Orchard Use.

Section 11.2 **General Covenant.** Subject to the requirements of applicable law, the strict application of the following covenants, conditions, and restrictions set forth in this Article XI, in any specific case, may be modified or waived, in whole or in part, by the Board if

such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing. The following covenants, conditions, and restrictions set forth in this Article XI are subject to the Development Rights and Special Declarant Rights reserved by Declarant.

Section 11.3 **Agricultural Uses**. Notwithstanding anything to the contrary contained in this Declaration, subject to all governmental ordinances, laws and regulations, the Owners are hereby put on notice that unless and until such time as the Additional Property is annexed to the Real Estate, the Additional Property may continue to be used for Agricultural Uses, and such uses, including such methods or practices that are commonly or reasonably associated with such use, shall not be deemed a public or private nuisance. Each Owner acknowledges and agrees that Agricultural Uses are allowed within the Additional Property and that such uses may: produce sights, sounds, and smells that some may deem undesirable in residential neighborhoods; contribute to blowing dust as a result of soil, weather, and harvest conditions; and require early morning and evening field and harvesting operations. Without limiting the generality of the foregoing, Owners and Owners' Permittees, and employees within the Community may be subjected to common and customary farming and agricultural activities such as the operation of an orchard, vineyard, or annual/perennial crop producing farm, any of which operations may include pesticide and herbicide spraying, weed cutting, irrigation, application of manure, fertilizer, orchard heating, and similarly-accepted farming practices. Said practices ordinarily and necessarily produce noise, dust, spray residue, smudge smoke, vapor, and other types of visual, odor, or noise pollution. Each Owner acknowledges and agrees that such activities within the Additional Property are lawful and protected agricultural activities and nothing in this Declaration, including, but not limited to, the provisions of this Article XI, shall be construed to give any Owner, Permittee, or employee within the Community a right to assert any claim or lawsuit against the Declarant, arising from such activities for any reason, or as a result of any noise, dust, sights and odors associated with the same.

Section 11.4 **Community Garden or Orchard Use**. Subject to the PUD Plan and any Rules and Regulations adopted by the Board, Garden/Orchard Tracts may be put to Community Garden or Orchard Use, among other uses set forth in the PUD Plan. In addition, and notwithstanding anything to the contrary that may be contained in this Declaration, Declarant or the Association shall have the right to convert additional common areas identified on the Plat to Garden/Orchard Tracts, which tracts also may be used for Community Garden or Orchard Use.

Section 11.5 **Maintenance of the Community**. No Common Elements shall be permitted to fall into disrepair and all property within the Community, including any Improvements, shall be kept and maintained in a clean, attractive and slightly condition. Except as otherwise provided herein, the maintenance, repair and upkeep of each Lot, and the Improvements located thereon, shall be the responsibility of the Owner of that Lot, and each Owner shall keep all parts of his or her Lot in good order and repair and free from debris or hazards. Maintenance, repair and upkeep of Common Elements shall be the responsibility of the Association as more particularly provided in this Declaration. Violation of this provision by an Owner shall permit the Association to enter upon the Lot of such Owner to cure such violation or otherwise cause compliance with this provision; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without notice to the Owner

as provided in Section 10.7. The ACB shall have the right, but not the obligation to adopt and issue maintenance standards and requirements to implement the provisions of this Section.

Section 11.6 **Use of Common Elements**. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association. No use shall be made of any Lot or of the Common Elements or Limited Common Elements which will increase the rate of insurance upon the Real Estate without the prior written consent of the Association. No Owner shall permit anything to be done or kept in the Owner's Lot or in the Common Elements or Limited Common Elements which will result in a cancellation of insurance on any portion of the Real Estate, or which will be in violation of any law, including, without limitation, any law, Rule or Regulation governing the storage, use, generation, or disposal of hazardous or toxic materials.

Section 11.7 **Residential Use**. Subject to Development Rights and Special Declarant Rights, Lots shall be used for residential purposes only, including uses that are customarily incident thereto, and shall not be used at any time for business, commercial, or professional purposes. Notwithstanding the foregoing, an Owner may use his or her Lot for a professional or home occupation, as long as the applicable zoning regulations permit such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Community is created thereby. The Board shall have the right to promulgate, modify and abrogate, from time to time, reasonable Rules and Regulations regarding permissible home business activities within a Lot.

Section 11.8 **Association Uses**. The Association shall have the right to maintain a management office within the Common Elements or within one or more Lots. Any Lot owned by the Association incidental to a foreclosure or acceptance of a deed in lieu of foreclosure upon an Owner's uncured failure to pay an Assessment past due, shall be deemed to be a Common Element for all purposes hereunder until such time as the Lot is conveyed to an Owner that is not Declarant, so that no Allocated Interests shall be appurtenant to such Lot.

Section 11.9 **Household Pets**. No animals, livestock, or poultry, of any kind, shall be raised, bred, kept or boarded in or on the Real Estate, except that dogs, cats, birds, fish, rodents, and non-poisonous reptiles may be kept by an Owner, subject to all governmental ordinances, laws and regulations, the Conservation Easement Agreement, and any Rules and Regulations that may be adopted or modified by the Board from time to time. Without limiting the generality of the foregoing, the following restrictions shall apply to the keeping of pets in or on the Real Estate:

(a) No dogs shall be allowed on any Lots located partially or wholly within any area identified on the Plat as the "200 Meter Heron Protection Area" (the "**Heron Protection Area**"). Cats may be permitted on such Lots but shall be required to be kept indoors at all times.

(b) Dogs shall be restricted to one (1) per Lot, plus young up to three (3) months old.

(c) Cats shall be restricted to one (1) per Lot, plus young up to three (3) months old.

(d) Dogs shall be kept in enclosed runs, designated dog parks, kennels, or electric fence areas, when not under leashed control.

(e) All household pets shall be controlled by their Owner and shall not be allowed outside of the Owner's Lot except when properly leashed and accompanied by the pet Owner or such Owner's representative.

(f) Subject to Subsection 11.9(a) above, dogs shall be required to be leashed at all times while utilizing any trail access located upon the Conservation Easement Area.

(g) All animals shall be prohibited in construction areas.

(h) No animal shall be tied or chained in the outdoor areas of any Lot or other parts of the Real Estate, including, without limitation, to any balconies, patios, porches or trees, and any animal so tied or chained may be removed by the Association or its agents.

(i) Each Owner shall be responsible for cleaning up from the Common Elements and the Conservation Easement Area such Owner's pet's waste.

The Board shall have the right and authority to determine in its sole and absolute discretion that dogs, cats or other household pets permitted herein are being kept in such number or in such manner as to be unreasonable or to create a nuisance or danger to other Owners or their Permittees, or that an Owner is otherwise in violation of this Section 11.9. The Board may take such action as it deems necessary to correct the same, including prohibiting the pet(s) from being kept on a Lot and requiring removal of the pet(s) from the Community. Each Owner of a household pet shall be financially responsible and liable for any damage caused by such pet, and shall pay for any damage caused by such pet, as well as any costs incurred by the Association as a result of such pet, and any such amounts shall constitute a Default Assessment subject to and enforceable by the Association in accordance with this Declaration.

Section 11.10 **Unlawful and Destructive Acts**. Nothing shall be done or kept in any Lot or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner or Owner's Permittees. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by the Owner or Owner's Permittees, which is in violation of this Section 11.10. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), then, after affording an Owner a reasonable opportunity to be heard by the Board, the amounts to be indemnified shall be and constitute a Default Assessment determined and levied against the Owner's Lot.

Section 11.11 **Signs and Advertising**. Except as hereafter provided, no signs, including for sale or for rent signs, advertisements, billboards, unsightly objects, or nuisances of any kind

shall be placed, erected, or permitted to remain in or on any Lot, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Association. Notwithstanding the foregoing, and subject to all governmental ordinances, laws and regulations, project identification signs and reasonable signs, advertising, or billboards used by Declarant in connection with its sale of Lots shall be permissible.

(a) Notwithstanding the foregoing, as long as state law requires, the Association shall not prohibit:

(i) the display of the American flag by an Owner in a window of the Owner's Lot, or on a balcony adjoining the Owner's Lot if the flag is displayed in a manner consistent with Colorado law and federal law, provided that the Association may adopt reasonable Rules and Regulations regarding the placement and manner of display of the flag, and the Rules and Regulations may restrict the location and size of flags and flagpoles, all in accordance with Colorado law;

(ii) the display by an Owner of a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military of the United States, on the inside of a window or door of the Owner's Lot, provided that the Association may adopt reasonable Rules and Regulations regarding the size and manner of display of service flags, except that the maximum dimensions allowed shall not be less than thirty-two inches (32") by sixty inches (60");

(iii) the display of a political sign by an Owner in a window of that Owner's Lot, except that the Association may prohibit the display of political signs earlier than forty-five (45) days before the day of an election and later than seven (7) days after election day, and provided that the Association may regulate the size and number of political signs that may be placed on a Lot if the Rules and Regulations are no more restrictive than any applicable County Regulation. The Association shall permit at least one (1) political sign per political office or ballot issue that is contested in a pending election. The maximum dimensions of each sign shall be limited to the lesser of (a) the maximum size allowed by County Regulations or (b) thirty-six (36) inches by forty-eight (48) inches.

Section 11.12 **Leasing**. Each Owner of a Lot shall have the right to lease that Owner's Lot provided that: (a) all Leases shall be in writing; (b) all Leases shall be for a Lot with a completed residence thereon; (c) all Leases shall provide that the terms of the Lease and the lessee's occupancy of the Lot shall be subject to the Governing Documents and that any failure by the lessee to comply with any of the Governing Documents in any respect shall be a default under such Lease; (d) no Owner shall lease the Owner's Lot for transient or hotel purposes and all leases shall be for longer than **[thirty (30) days]**; and (e) such Owner shall notify the Association immediately upon the leasing of such Lot and register with the Association both the name(s) of the tenant(s) and new mailing information for notices to be sent by the Association directly to such Owner. Without limiting the generality of the foregoing, the Association shall have the right, from time to time, to establish, amend and abrogate reasonable Rules and Regulations further restricting leasing.

Section 11.13 **Nuisances**. No nuisance shall be allowed at the Community, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Community by its residents. As used herein, the term "nuisance" shall not include any activities of a Declarant concerning the completion of the Community, or the exercise of Development Rights and Special Declarant Rights. All parts of the Community shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no activities reasonably deemed by the Board as offensive and no unlawful use shall be permitted or made of the Community or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

(a) **Garbage Collection**. Each Owner shall dispose of the garbage collected within his or her Lot into containers of such dimensions and at such locations as the Association shall from time to time designate. The Association may enter into a Bulk Services Agreement for purposes of trash collection. No portion of the Community shall be used for dumping refuse.

Section 11.14 **Hazardous Activities**. No activity shall be conducted on and no Improvement shall be constructed on any property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Community, and no open fires shall be lighted or permitted within the Community. No Lot or any other portion of the Community may be used for storage of explosives, gasoline, combustible material or other volatile and/or incendiary materials or devices.

Section 11.15 **Restriction on Exterior Electronic Devices**. Subject to applicable law, including, without limitation, the Telecommunications Act of 1996, and subject to reasonable Rules and Regulations, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type ("**Electronic Device**") shall be erected, installed, or maintained by an Owner on the Common Elements. All costs associated with the installation or maintenance of any Electronic Device by an Owner, including costs of repair, replacement, improvement, and maintenance of the structure on which the Electronic Device is affixed, erected, and/or installed, shall be the sole responsibility of that Owner.

Section 11.16 **Fences**. Fences shall be allowed within a Lot only to the extent and in the manner permitted by this Declaration and the PUD Guide. Privacy fences, security fences, fences for dog runs and fences for screening purposes shall not be constructed on any Lot without the prior written approval of the ACB. The approval of any fence shall be in the ACB's sole and absolute discretion. The Association shall have the right, but not the obligation, subject to the approval of the ACB, and Declarant shall have the right, but not the obligation, to construct certain entryways, fences, fence pillars or walls on the boundary lines of Lots and Tracts within the Community. No Owner shall modify, repair, replace, paint or otherwise obstruct any such entryways, fence, fence pillars, or walls without the prior written approval of the ACB.

Section 11.17 **Trails**. Any trails located within the Community shall be used for non-motorized vehicle use only, except that the reasonable use of such trails by maintenance vehicles is permitted. Such trails shall be closed from December 1st through and including March 31st of

each year. In addition, any portion of such trails that is located within the Heron Activity Area or the Heron Protection Area shall be closed from March 1st through and including August 1st of each year.

Section 11.18 **Wildlife Protection**. To minimize bear-human conflicts and/or protect sensitive bird species, the following restrictions shall remain in place:

(a) All contractors and subcontractors shall be required to properly dispose of trash, food and drink items.

(b) Residential garbage shall be placed in bear-proof dumpsters, individual bear-proof trash containers, or trash containers located within enclosed structures. Individual trash containers shall not be left outside overnight.

(c) Household pets shall not be fed outside.

(d) Birdfeeders and hummingbird feeders shall: (i) be hung away from windows and decks of residences; (ii) be hung at least ten feet (10') from the ground; (iii) be suspended between two (2) trees or posts; and (iv) be brought indoors overnight; and (v) not be permitted from September 1st through and including November 30th of each year. In addition, catchment basins shall be used underneath birdfeeders and hummingbird feeders to catch seed.

(e) Compost piles shall be prohibited unless allowed by the Board in a designated, centralized, wildlife-proof area.

(f) Private gardens and orchards may be allowed within Lots; provided, however, that the Board may require, in its reasonable discretion, that an Owner remove such gardens or orchards if such uses result in attracting bears.

Section 11.19 **Rules and Regulations**. As provided in Section 6.15 above, Rules and Regulations governing the details of the operation, use, maintenance and control of the Lots, Common Elements, Limited Common Elements, the Real Estate and any Amenities or services made available to the Owners (including additional use restrictions), and the Conservation Easement Area, may be promulgated, modified or amended, from time to time, by the Board. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Owners upon request. The Association shall have the right to enforce all restrictions set forth in this Article and in the Declaration in any manner it deems necessary, including, without limitation, suits for injunctions, actions for damages, or fines.

Section 11.20 **Conservation Easement Agreement Restrictions**. Declarant, the Association and its agents, contractors and representatives, Owners and their Permittees shall be bound by the restrictions and conditions set forth in the Conservation Easement Agreement, including, without limitation, the restrictions and conditions listed below. Subsections 11.9(a), (b), (c), and (e) above and the following provisions of this Declaration shall not be amended without the prior written approval RFC.

(a) **Building Restrictions**. No outdoor construction activities such as excavation, foundation, framing, siding, masonry, roofing or related activities shall occur upon

property located within the Heron Protection Area any time between February 15 and July 15, inclusive, of any year or within the Heron Activity Zone any time between March 1 and August 1, inclusive, of any year. In addition, within the area shown and described on **Exhibit F**, building heights shall not exceed twenty-five feet (25') and second story decks and accessory dwelling units shall be prohibited. No trees, vegetation, or other existing natural attributes which act as a screen between the Heron Protection Area and any adjacent property may be removed or altered in connection with the development of the Community unless approved by RFC. No trees, vegetation, or other existing natural attributes which act as a screen between the Heron Activity Zone and any adjacent property may be removed or altered in connection with the development of the Community unless and until such zone is relocated or terminated in accordance with an Annual Survey. Any fencing on property adjacent to the Conservation Easement Area shall be as approved by the Colorado Division of Wildlife ("**CDOW**"); provided, however, that silt fencing shall be installed along Cattle Creek prior to and throughout the duration of any construction activities adjacent to Cattle Creek.

(b) **Conservation Easement Use Restrictions.** Except as otherwise provided in Subsection 11.20(c) below or the Conservation Easement Agreement, the following uses are prohibited in the Conservation Easement Area:

- (i) Subdivision or development of any nature;
- (ii) Any residential, commercial or industrial development or use;
- (iii) Any recreational activities;
- (iv) Any vehicular (car, truck, motorcycle, snowmobile, etc.) use, except as may be necessary in emergency situations or to preserve, enhance or protect the Easement, at the discretion of Grantee;
- (v) Parking, storage, or dumping of any kind;
- (vi) Coverage of land by asphalt, concrete, or other material that does not constitute a natural cover for the land;
- (vii) Location of any buildings, structures, roads, trails or other improvements;
- (viii) Alteration of the land surface through grading, soil dumping, trenching, vegetation removal or trimming, or any other method except as may be otherwise approved by Grantee, or necessary for activities related to the purpose of this grant of Easement such as irrigation improvements, utility repair subject to remediation, habitat restoration/preservation, etc.;
- (ix) Exploration or mining for any mineral, coal or other hydrocarbons, or other materials or substances, or excavation or quarrying for gravel, soil, rock, sand or similar materials;
- (x) Placement of any advertising signs or billboards;

(xi) Cutting or removal of trees, shrubs, or any other vegetation, except as necessary for fire protection, elimination of diseased growth, and similar protective measures related to habitat preservation/enhancement at the discretion of Grantee;

(xii) Introduction of nonnative plants and animal species within riparian areas that may compete with and result in the decline or elimination of natural species, unless otherwise approved by Grantee. Any new plantings or animal introductions shall be confined to native plants and/or animals characteristic of the riparian region;

(xiii) No livestock shall be brought or allowed upon the Easement Property, and the Grantor shall be responsible for removing any livestock which enters onto the Easement Property;

(xiv) Any use that would cause, increase, or substantially add to the risk of soil erosion;

(xv) Use of any chemical agents such as weed control agents or other herbicides or pesticides not approved by state law or otherwise approved by Grantee;

(xvi) Public use of and access upon the Easement Property, except as allowed by the Grantee in furtherance of the purposes of this Easement;

(xvii) Dumping or other disposal of toxic and/or hazardous materials or of other forms of refuse or trash. This prohibition does not impose any liability on Grantee, nor shall Grantee be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes;

(xviii) Any and all other prohibited uses set forth in the Conservation Easement Agreement;

(xix) Within the area described in the Conservation Easement Agreement as the "Rookery Zone," there shall be (a) no bridges, roads, or trails of any kind; (b) no access by the Owners, their Permittees or the public; (c) and, except as provided in Subsection 11.20(c)(vi)(2) below and as otherwise specifically allowed in the Conservation Easement Agreement, no access by grantor under such agreement, its agents, employees, or representatives, including, without limitation, Declarant and the Association, and their contractors, agents and representatives.

(c) **Rights of Association in Conservation Easement Area**. Declarant, the Association, its contractors, agents and representatives may (but shall not be required except as otherwise provided in the Conservation Easement Area or the Governing Documents) engage in the following activities within the Conservation Easement Area:

(i) Restore damage to the Easement Property that may be caused by fire, flood, storm, earth movements, or acts beyond Grantor's control;

(ii) Maintain any public trails located upon the Conservation Easement Area in accordance with the Conservation Easement Agreement;

(iii) Mutually, with RFC, enforce against and prevent any prohibited action set forth in the Conservation Easement Agreement;

(iv) Erect appropriate signage and fencing, upon review and approval of RFC, indicating the presence of the Conservation Easement Area and its boundaries;

(v) Construct a new holding pond within the Heron Protection Area subject to approval by Grantee of the final location, scope and dimensions of such holding pond;

(vi) Construct and/or install utilities on and across the Conservation Easement Area as follows:

(1) Within the area described in the Conservation Easement Agreement as the "Upper Roaring Fork Riparian Zone," install (a) a water intake structure from the Roaring Fork River within this zone; (b) an underground water line from such intake structure across the Conservation Easement Area to approved development sites located east of this zone; (c) an underground sewer and/or water line and utility line crossing(s) across the Roaring Fork River within this zone; provided, however, that the location, construction, and installation of said improvements shall be conducted with input from RFC and coordination of timing of construction with CDOW.

(2) Within the area described in the Conservation Easement Agreement as the "Rookery Zone," install underground or otherwise buried pipes, culverts or other components in connection with the new holding pond and reasonably approve by RFC, shall be allowed; provided, however, that no other utilities or infrastructure shall be installed in this area.

(3) Within the area described in the Conservation Easement Agreement as the "Cattle Creek/Lower Roaring Fork Riparian Zone," install underground sewer and/or water and/or utility line(s) within this zone, subject to input from RFC and coordination of timing of construction with CDOW.

(vii) Construct certain trails, roads and bridges, over or across the Conservation Easement Area, or immediately adjacent to the Conservation Easement Area, as follows:

(1) Within the area described in the Conservation Easement Agreement as the "Upper Roaring Fork Riparian Zone," install (a) roads or bridges for temporary construction access for the purposes set forth in Subsection 11.20(c)(vi)(1) above, and for no other purpose, which access shall be located with input from RFC; (ii) a primitive dirt, gravel, or other natural material trail not to exceed four feet (4') in width limited strictly to fisherman access/pedestrian use, as may be mutually agreed between the Association and RFC;

(2) Within the area described in the Conservation Easement Agreement as the "Cattle Creek/Lower Roaring Fork Riparian Zone," install (a) up to two (2) road crossings across Cattle Creek, subject to direct input, review, and approval of RFC; (b) a bridge crossing across the Roaring Fork River at the northerly most end of the zone, subject to direct input, review, and approval of RFC; (c) a primitive, unimproved trail limited strictly to

fisherman access/pedestrian use in the northerly most section of this zone in a location to the north of the Heron Protection Area, the proposed location of which shall be reviewed and reasonably approved by RFC; and (d) such trails that Declarant is required to construct by agreement with RFTA, the location for which shall be subject to the review and reasonable approval of RFC. Construction of the roads and/or bridges contemplated herein shall be subject to construction and location limitations set forth in Subsection 11.20(a) above, unless otherwise authorized or allowed by RFC.

Section 11.21 **Open Space Management Plan.** In addition to the Governing Documents and the Conservation Easement Agreement, any use and activity proposed for and carried out within tracts identified on the PUD Plan as "open space" shall comply with the standards and requirements set forth in the open space management plan attached as **Exhibit G,** as the same may be amended from time to time by Declarant and/or the Association, in their reasonable discretion.

Section 11.22 **Landscape Maintenance.** Except as otherwise provided in Section 11.21, the ACB shall have the right, but not the obligation, to develop requirements for maintenance of landscaped areas throughout the Community, subject to the approval of the Board. These requirements may include, without limitations, standards for weed control and mowing of lawns.

Section 11.23 **No Temporary Structures.** Except as may be specifically permitted under the PUD Guide, Rules and Regulations or as may be approved with the prior written consent of the Association, no tent, shelter, shack, shed, storage facility, temporary structure or temporary building shall be placed upon any property within the Community. The provisions of this Section 11.23 shall not apply to any temporary structures placed on property within the Community through the reasonable and customary construction activities of the Declarant, including, without limitation, model homes, construction offices, management offices and sales offices.

Section 11.24 **Restriction on Timesharing and Similar Programs.** Use or ownership of any Lot for operation of a timesharing, fraction-sharing or similar program, where the right to exclusive use of a Lot rotates among participants in the program on a fixed or floating time schedule over a period of years and all similar ownership or use programs, schemes or clubs is prohibited.

Section 11.25 **Construction Use.** It is expressly permissible for Declarant to perform construction and such other reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of the Lots in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, material and equipment storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities. Without limiting the generality of the foregoing, and subject to the PUD Guide, Declarant shall have the right to conduct Materials Processing on and within the Real Estate and Additional Property for use in the construction of the Community. Each Owner acknowledges and agrees that the uses and activities described in this Section 11.25 shall not be deemed a public or private nuisance.

Section 11.26 **Vehicle Repairs.** No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, machine or device may be carried on within the Community except within a completely enclosed structure which screens the sight and sound of such activity from the street and from other Lots or Tracts.

Section 11.27 **On-Street Parking.** On-street parking shall not obstruct access along or through the Project's roads and alleys, and shall conform to any applicable Rules and Regulations and generally-accepted on-street parking requirements and laws.

Section 11.28 **Off-Street Parking.** Off-street parking of vehicles shall occur only within designated areas within the Community and within driveways and/or garages within Lots. All off-street parking shall comply with any applicable Rules and Regulations and generally-accepted off-street parking requirements and laws. Without limiting the generality of the foregoing, no more than three (3) passenger automobiles, including pick-up trucks, may be stored outdoors within the boundaries of a Lot, and all such vehicles shall be in an operable condition for use upon the highways of the state and shall be currently licensed and registered.

Section 11.29 **Automobiles and other Motor Vehicles, Trailers, Parking, etc.** Except as otherwise provided in Section 11.32 below, mobile homes, motor homes, truck campers, oversized vehicles (excepting larger SUV's), recreational vehicles, trailers and boats shall not be kept, placed, stored, parked, maintained or operated upon any portion of the Community for any period in excess of forty-eight (48) hours. Notwithstanding the foregoing, no vehicles with a gross vehicle weight rating of 13,001 lbs or greater shall be kept, stored or parked within the Community; provided, however, that this restriction shall not restrict trucks or other commercial vehicles that are necessary for construction or for the maintenance of any portion of the Community or any Improvements located thereon.

Section 11.30 **Inoperable Vehicles.** Inoperable vehicles shall not be kept, placed, stored, parked maintained or operated upon any roads or alleys within the Community. Inoperable vehicles shall not be kept, placed, stored, parked, or maintained within any Lot for any period in excess of forty-eight (48) hours.

Section 11.31 **Parking Violations.** Each Owner hereby expressly agrees that, in the event of any violation of Sections 11.26 through 11.30, or any Rules and Regulations related thereto, the Association shall have the right to have any such vehicle removed at the expense of the violating Owner and the cost incurred by the Association to have any such vehicle removed and stored shall be charged against the violating Owner as a Default Assessment. Further, the violating Owner hereby expressly waives any claim against the Association or the party removing any such vehicle owned by the Owner for any damage that may be incurred thereby in the removal and storage thereof; and the violating Owner hereby expressly agrees to indemnify and hold harmless the Association and the party removing any such vehicle owned by any Permittee of such violating Owner's Lot for any damage that may be incurred thereby in the removal and storage thereof.

Section 11.32 **Material and Equipment Storage.** All materials and equipment located within a Lot shall be stored within a completed enclosed structure or fully screened so as not to be visible from adjoining properties or from any street, except for the following:

(i) Clotheslines or other clothes-drying apparatus, if stored in the rear yard and more than five (5) feet from any Lot line.

(ii) Boats, canoes, snowmobiles, trailers and unoccupied recreational-type campers and trailers, less than twenty (20) feet in length, if stored in the rear yard and more than five (5) feet from any Lot line.

(iii) Construction and landscaping materials and equipment currently being used on the Lot for improvements to the Lot; provided, however, that such materials and equipment may be stored for a period not more than forty-five (45) days, while work is actually in progress.

(iv) Heating wood intended for use on the Lot, if stored in the rear yard and more than five (5) feet from any Lot line. Heating wood being held for sale shall not be allowed to be stored on any Lot. Any quantity of heating wood in excess of four (4) cords shall be presumed to be held for sale.

Section 11.33 **Yard Sales**. Yard sales shall not be allowed on a Lot. Community-wide yard sales may be permitted by the Association on the Tract containing the Neighborhood Center but only if the roads providing access to such Tract are public roads.

Section 11.34 **Community Service Use Restrictions**. Subject to the PUD Plan, Declarant, in its sole and absolute discretion, and the Association, upon the termination of the Declarant Control Period, may provide Community Service Space within the Neighborhood Center to be used for Community Service Uses. Notwithstanding anything to the contrary contained herein, the following uses shall be prohibited within the Community: a dry cleaning plant (as compared to a drop-off and pickup only facility, which shall be permitted), discotheque, dance hall, nightclub (except that sports bars and/or wine bars that have weekend musical entertainment shall be permitted), pawn shops, amusement gallery, adult entertainment facility featuring nude or semi-nude dancing or entertainment, massage parlor (except that day spas or the like are permissible), adult book store, pin ball or electronic game room, a so-called “head shop” selling or displaying illegal drug paraphernalia, mortuary or funeral parlor, temporary or permanent carnivals (except that temporary carnivals lasting no more than two weeks for special promotional purposes shall be permitted), circuses, amusement parks or gambling establishments, bingo parlor, free-standing cafeterias, public assistance offices, marijuana dispensaries or marijuana growing operations, or the sale of automobiles, trucks, other motorized vehicles, or trailers, or any use that generates an unreasonable volume of traffic (in the sole and absolute discretion of the Board), or for any other use which is immoral, offensive, unlawful or which is prohibited under state, county and local zoning rules and regulations.

(a) **Signs**. In addition to the requirements set forth in Section 11.11 above, signs advertising a Community Service Use that are placed within the Community Service Space but are visible from the exterior of the Community Service Space shall be subject to the review and approval of the ACB as set forth in Article XII below.

(b) **Nuisances**. Nothing shall be done or maintained within any Community Service Space that may become an annoyance or nuisance to other Owners. Any dispute or

questions as to what may be or become a nuisance will be submitted to the Board, and the written decision of the Board will be dispositive. The usual and necessary level of noise created by the use of the Community Service Space permitted under the applicable zoning will not be deemed a nuisance. No waste will be committed in or on any Community Service Space or the Common Elements.

ARTICLE XII ARCHITECTURAL CONTROL BOARD

Section 12.1 **Required Approval**. The initial construction of a building or any other Improvement on a Lot must first be submitted to and approved in writing by the ACB. The ACB must insure that each submittal meets, at a minimum, any and all requirements of the PUD Plan. In addition, except as set forth in Section 12.2 below, any and all changes to the exterior of any building or other Improvement (after initial installation or construction) that meet any of the criteria listed below must first be submitted in writing to and approved in writing by the ACB:

- (a) the Improvement increases the gross interior square footage of a building;
- (b) the addition of any exterior decks, balconies or other additions more than thirty inches (30") above the ground floor of a building;
- (c) the Improvement effects a substantial change or alteration to the architectural style and character of a building including, without limitation, to exterior appearance, finish material, color or texture, in the opinion of the ACB;
- (d) the addition of an accessory or additional structure to the Lot;
- (e) the Improvement results in a substantial change to the roof plane or lines of a building;
- (f) the demolition or destruction by voluntary action of any building, structure or other Improvement;
- (g) the installation of any landscaping or the modification of any approved landscaping design;
- (h) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, or change of drainage pattern;
- (i) changes in the exterior color or texture of the building; and
- (j) changes in zoning or use.

Section 12.2 **Changes Not Requiring Approval**. The following changes to the exterior of any building or other Improvements (after initial installation and construction) are not required to be approved by the ACB:

- (a) repainting the exterior of a building in the same color and texture; or
- (b) construction of a deck or patio at ground level of the Improvements that is less than thirty inches (30") above the ground floor of a building that does not encroach upon any setbacks or easements.

Section 12.3 **Action of the ACB**. The ACB may require that applications of Owners be accompanied by payment of a fee for processing of the application with the required submittal items. Submittal items may include, without limitation, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors showing exterior design, height, materials, colors, location of the proposed and existing Improvements (plotted horizontally and vertically), as well as such other materials and information as may be required by the ACB, including, but not limited to, evidence of Governmental Approvals (as defined hereafter). The ACB may require the submission of additional plans, specifications or other information prior to approving or disapproving the change. The ACB may also require, in its sole discretion, a construction compliance binder deposit, depending on the scope of the submission. The ACB may provide that the amount of such fee and/or compliance deposit(s) shall be uniform for similar types of proposed Improvements or that the fee and/or compliance deposit(s) shall be determined in any other reasonable manner. The fee may also include engineering, architectural, and any other consultant fees reasonably incurred by the ACB in reviewing any proposed Improvement. Until receipt by the ACB of all required materials in connection with the proposed improvement, including fees and/or compliance deposits, the ACB may postpone review of any materials submitted. Additionally, if the applicant Owner is in default hereof or is not current in the payment of any and all Assessments, any review shall be suspended until such default is cured and payment of any and all Assessments is current. The ACB shall exercise its reasonable judgment to the end that all renovations, remodels, additions and changes subject to regulation under this Declaration shall comply with the requirements of this Declaration, the PUD Plan and the design guidelines adopted as provided for in this Declaration (the "**Design Guidelines**"). The ACB shall approve any proposed improvement to the Real Property only if it deems in its reasonable discretion that the change to the property meets the criteria set forth herein. Decisions of the ACB shall be conclusive and binding on all interested parties, subject to the right of an Owner to appeal to the Board, as provided for in this Declaration. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration, the PUD Plan, and Design Guidelines. Any denial shall be in writing and shall set forth the basis for the denial. The ACB may condition its approval of plans and specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The ACB may consider and review any and all aspects of construction, construction of other improvements and locations, quality and quantity of landscaping, and may disapprove aspects thereof which may, in the opinion of the ACB, adversely affect the living, work, or other environment or enjoyment of one or more Owners or of the general value of property within the Community. The ACB is also permitted to consider technological advances in design, materials and construction and such design, materials and construction may or may not be permitted in accordance with the opinion of the ACB.

Section 12.4 **Establishment of the ACB.** The ACB initially shall consist of [at least three (3) but no more than five (5) members]. Declarant shall have the continuing right to appoint all members of the ACB during the ACB Appointment Period. The Board shall have the right to appoint such members after the end of the ACB Appointment Period. The "**ACB Appointment Period**" shall mean the period of time commencing as of the date of recordation of this Declaration and continuing until the earliest to occur of the following events: (i) when the Declarant Control Period has expired, or (ii) when, in its discretion, Declarant voluntarily relinquishes such right. Members of the ACB may, but shall not necessarily be, members of the Association. After the ACB Appointment Period, members of the ACB may be removed at any time by the Board, and shall serve for such term as may be designated by the Board, or until resignation of the member or removal by the Board. During the ACB Appointment Period, Declarant shall give the Association notice of the appointment or removal of any member of the ACB. After the ACB Appointment Period, the Board may, at any time and from time to time change the authorized number of members of the ACB, but the number of members of the ACB [shall not be less than three (3)]. A majority of the ACB shall constitute a quorum of the ACB, and a majority of the ACB members present at any meeting where a quorum is present shall be required for ACB action.

Section 12.5 **Architectural Design Guidelines.** The ACB may, from time to time, recommend to the Board, for adoption by the Board, the Design Guidelines, or any other standards, rules and regulations and procedures governing design review for the purposes of:

(a) Further enhancing, defining, or interpreting what items or improvements are covered by this Article XII; and

(b) Providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the ACB deems to be proper, necessary or in the best interests of the Community; provided that neither the Board nor the ACB in its review or approval of any application, will be deemed to be giving any opinion, warranty or representation as to compliance with any of the foregoing; and

(c) Establishing written design criteria, rules, standards, and procedures from time to time, which shall be deemed included in any Rules and Regulations adopted by the Association.

Any Design Guidelines, standards, rules and regulations, procedure or amendment thereto, shall be approved by the Board and shall apply to construction, additions, modifications, installations or items placed on a Lot occurring after the date such Design Guidelines, standards, rules and regulations, procedures or amendments are published or otherwise made available to all Owners.

Section 12.6 **Reply and Communication.** The ACB shall reply in writing to all submittals of plans made in accordance with this Article, within forty-five (45) days after the completion of submittals or presentation of them to the ACB at one of its meetings, whichever occurs later. The ACB shall respond in writing in one of the following ways: (a) approval as submitted; (b) approval with conditions; (c) deferral of action pending receipt and review of

further information required by the ACB; or (d) disapproval. If no action is taken, it shall be deemed that the ACB has deferred its action. Subject to the provisions of this Article XII, the decision of the ACB shall be final on all matters submitted to it pursuant to this Declaration. All communications and submittals shall be addressed to the ACB at such address as the chairperson of the ACB may designate.

Section 12.7 **Variances**. The ACB may grant reasonable variances or adjustments from the Design Guidelines or from any conditions and restrictions imposed by this Article in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the Design Guidelines or such other conditions and restrictions. Such variances or adjustments shall be granted only when the granting thereof shall not deviate substantially from the general intent and purpose of the Design Guidelines or this Declaration. No variance or adjustment granted by the ACB shall be deemed to apply to any other building, Owner, improvement or Lot, other than the applicant. Each variance or adjustment will be considered on a case-by-case basis and each Owner, by acceptance of title to a Lot, agrees and acknowledges that no variance or adjustment granted by the ACB shall be construed to establish precedent in favor of an Owner submitting a similar request for a variance or an adjustment.

Section 12.8 **Appeal Rights of Owners**. Prior to the expiration of the ACB Appointment Period, a decision of the ACB is final. Subsequent to the ACB Appointment Period, if any application of an Owner is disapproved by the ACB, then the applicant shall have the right of appeal to the Board. In considering the appeal, the Board shall only overturn the ACB decision if the Board determines that the ACB abused its discretion or acted in an arbitrary or capricious manner. The decision of the Board shall be final.

Section 12.9 **No Deemed Waivers**. No action or failure to act by the ACB or by the Board, shall constitute a waiver or estoppel with respect to future action by the ACB or the Board, with respect to any improvement to property. Specifically, the approval by the ACB of any improvement to property shall not be deemed a waiver of any right or an estoppel to withholding approval or consent for any similar improvement or property or any similar proposals, plans, specifications or other materials submitted with respect to any other improvement to property.

Section 12.10 **Limitation in Liability**. The ACB and the members thereof, as well as any representative of the ACB designated to act on its behalf, shall not be liable in damages to any Person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under this Declaration. The ACB shall not be responsible for structural, engineering or any other defects in plans approved or for violations of any building or zoning code or other land use regulations.

Section 12.11 **Records**. The ACB shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any Owner during reasonable business hours.

Section 12.12 **Enforcement of this Article.**

(a) Any improvement to a Lot made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Should the ACB determine that any improvement has been done without approval or was not done in substantial compliance with the description and materials furnished (regardless of how long ago the improvement was completed), any conditions imposed, or was not completed with due diligence, the ACB, acting on behalf of the Association, shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance. Upon receipt of any such notice, the Owner of the Lot upon which such improvement is made shall, at such Owner's own cost and expense, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming improvement. Should the Owner fail to take such action within the time specified in the notice of noncompliance, the Association shall have the right to record a copy of such notice of noncompliance in the Office of the Clerk and Recorder for the County. Further, the Association shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Default Assessment. The provisions of this Section 12.12 shall be in addition to all other legal and equitable remedies the Association shall have.

(b) In addition to the enforcement rights of the Association set forth above, the ACB shall have the right, but not the obligation, to institute, maintain and prosecute proceedings in law or equity against the person or persons violating or attempting to violate any of the terms and provisions of this Article XII. In any action instituted or maintained under this Article, the ACB shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the ACB to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(c) Upon completion of the Improvements to the property, the Owner shall give written notice of completion to the ACB. Until the date of receipt of a notice of completion, the ACB shall not be deemed to have notice of completion of such improvement to property.

(d) The ACB or its duly authorized representative shall have the right to inspect any improvement to property prior to or after completion; provided that the right of inspection shall terminate sixty (60) days after the ACB receives a notice of completion from the Owner.

Section 12.13 **Compensation of Members.** The members of the ACB may, at the sole discretion of the Board, be entitled to reasonable compensation for services rendered, together with reimbursement for expenses incurred by them in performance of their duties. Any decision to provide such compensation may be determined and memorialized in writing by formal action of the Board.

Section 12.14 **Indemnification.** To the full extent permitted by law, each member of the ACB shall be and is hereby indemnified by the Association against all expenses and liabilities,

including attorneys' fees, reasonably incurred by or imposed upon such member in any proceeding to which such member may be a party, or in which such member may become involved, by reason of being or having been a member of the ACB, whether or not such member is a member of the ACB at the time such expenses are incurred. This indemnification shall not apply to cases where such member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In addition, in the event of a settlement, the indemnification shall apply only when the Association approves such settlement and reimbursement as being in the best interests of the ACB.

Section 12.15 **Address**. The address of the ACB shall be the address of the Association.

Section 12.16 **Obtaining Governmental Approvals**. Owner shall obtain, prior to commencement of construction of any improvements, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("**Governmental Approvals**") required to construct, operate and maintain the improvements on the property. The Governmental Approvals shall be deemed to include, but shall not be limited to, building approvals by the County.

ARTICLE XIII CASUALTY AND CONDEMNATION

Section 13.1 **Association as Attorney-in-Fact**. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Community in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any Improvements, Common Elements, or other portions of the Community which have been destroyed, damaged, condemned, or become obsolete. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from a Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place, and stead, for the purpose of dealing with the Community upon its damage, destruction, obsolescence, or condemnation, as is hereafter provided. As attorney-in-fact, the Association by its duly authorized officers and agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. If the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Community upon its destruction, damage, obsolescence, or condemnation, shall be appointed. Such appointment must be approved by the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 13.2 **Damage or Destruction**.

(a) Repair and reconstruction of the Improvements, Common Elements, or other portions of the Community as used in Section 13.1 above, means restoring the same to substantially the same condition in which they existed prior to their damage or destruction to the

extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration, or replacement, in accordance with the provisions hereafter set forth.

(b) Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds shall be paid to the Association or to an insurance trustee designated for such purpose and not to the holder of any Security Interest (a "**lienholder**"). The insurance trustee or the Association shall hold such insurance proceeds in trust for the Owners and lienholders as their interest may appear. Subject to the provisions of Subsection (c) below, the proceeds must be disbursed first to the repair or restoration of the damaged property, and the Association, Owners and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated in accordance with Section 14.1. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and such other matters of claims adjustment. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the Improvements, Common Elements, or other portions of the Community. Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction. In addition, to the extent that the Association settles claims for damages to any real property, the Association shall have authority to assess negligent Owners or their tenants causing such loss or benefiting from such repair or restoration all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of repair and reconstruction. If more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

(c) Any portion of the Community for which insurance is required under this Declaration must be repaired or replaced promptly by the Association, unless (i) the Community is terminated in accordance with Section 14.1, in which case the provisions of that Section shall apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) the Owners who hold sixty-seven percent (67%) of the votes in the Association vote not to rebuild, and every Owner of a Lot or assigned Limited Common Element that will not be rebuilt concurs; or (iv) prior to the conveyance of any Lot to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial portion of the insurance proceeds.

(d) Except with respect to repair or replacement costs for which any Owner is responsible by reason of his negligent act or otherwise, the cost of repair or replacement of any portion of the Community in excess of insurance proceeds and reserves shall be a Common Expense. Such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment. Such Special Assessment shall be assessed against all Lots in accordance with Section 7.5 hereof, but without the requirement of complying with the budget approval process set forth in Section 7.7 above. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair, replacement, or restoration of the Except with respect to repair or replacement costs for which any Owner is responsible by reason of his negligent act or otherwise, the cost of repair or replacement of any portion of the Community in excess of

insurance proceeds and reserves shall be a Common Expense, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid Special Assessment. Notwithstanding the foregoing, the Association shall have authority to assess negligent Owners causing any loss all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of repair and reconstruction.

(e) If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other persons will be distributees, the insurance proceeds attributable to Lots and Limited Common Elements that are not rebuilt shall be distributed to the Owners of those Lots, and the Owners of the Lots to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Lots' allocated interests in all Common Elements (as shown on **Exhibit C**).

Section 13.3 **Condemnation**. If at any time during the ownership of a Lot pursuant to this Declaration, all or any part of the Community shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this **Section 13.3** shall apply:

(a) All compensation, damages, or other proceeds therefrom, the sum of which is hereafter called the "**Condemnation Award**," shall be payable to the Association, as attorney-in-fact for the Owners, as provided in **Section 13.1** above. The Association shall have the right to appear in any condemnation proceeding on behalf of the Owners.

(b) If the entire Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board as if there had been a termination of the Community under **Section 14.1**; provided, however, that if a standard different from the value of the Community as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree, or otherwise, then, in determining such shares, the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in **Section 13.2** hereof.

(c) Subject to the provisions of **Article XV** hereof, if less than the entire Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: As soon as practicable, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners in accordance with the undivided interest in the Common Elements appurtenant to each Lot (as shown on **Exhibit C**); (ii) the total amount allocated to severance damages shall be apportioned to those Lots which were not taken or

condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Lot, including, but not limited to, the Limited Common Elements appurtenant thereto, and to the Improvements an Owner has made within his or her Lot, shall be apportioned to the particular Lot involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Lot shall be based on the comparative values of the affected Lots as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including, but not limited to, recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.

(d) If a partial taking results in the taking of a complete Lot, the Owner(s) thereof shall automatically cease to be a Member(s), shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the Allocated Interests in accordance with this Declaration, and shall submit such reallocation to the Owners of all remaining Lots for amendment of this Declaration. The Condemnation Award as to each such completely taken Lot shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.

(e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 13.3 hereof.

(f) If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the Condemnation Award shall include compensation to the Owner for that Lot and its Allocated Interests whether or not any Common Elements are acquired. The Owner thereof shall automatically cease to be a Member of the Association, shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Upon acquisition, unless the decree otherwise provides, that Lot's Allocated Interests are automatically reallocated to the remaining Lots in proportion to the respective Allocated Interests of those Lots before the taking. Any remnant of a Lot remaining after a part of a Lot is taken pursuant to this Section 13.3(f) each of such is thereafter a Common Element.

(g) Except as provided in Section 13.3(f) above, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot and its Allocated Interest in the Common Elements whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides the Lot shall retain its one vote in the Association, but the interest of a Lot in the Common Elements, and its General Assessment Percentage shall be reduced by the same percentage that the square footage of the Lot was reduced by the taking, and the amount of the reduction shall be allocated among all Lots (including the Lot affected by the taking) pro rata in proportion to their interest in the Common

Elements after the reduction described above. The reallocation of Allocated Interests pursuant to this Section shall be confirmed by an Amendment to this Declaration prepared, executed and recorded by the Association.

(h) If part or all of any Limited Common Element is acquired by eminent domain, the Condemnation Award attributable to the taking of the Limited Common Element shall be divided equally among the Owners of the Lots to which that Limited Common Element was allocated at the time of the acquisition.

ARTICLE XIV AMENDMENTS AND TERMINATION OF THE COMMUNITY

Section 14.1 **Termination of the Community**. The Community may be terminated only by agreement of Owners of Lots to which at least eighty-percent (80%) of the votes in the Association are allocated, the provisions of Section 218 of the Act shall apply.

Section 14.2 **Amendment of Declaration by Action of Declarant**. Until such time as Declarant has conveyed any portion of the Real Estate to a person or entity other than Declarant, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by the recordation of a written instrument, executed and consented to by Declarant, setting forth such amendment or termination. Declarant reserves the right to amend this Declaration unilaterally in all circumstances permitted by the Act, including, without limitation, to exercise any development right or special declarant right; to correct clerical, typographical, or technical errors; and to comply with requirements, standards, or guidelines of the Agencies.

Section 14.3 **Amendment Required by Holders of Security Interests**. Prior to the expiration of the Development Rights Period, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration that any holder of a first lien Security Interest requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon its recording in the real property records of County of a certificate setting forth the amendment or repeal in full.

Section 14.4 **Amendment of Declaration by Action of Members**. Except as otherwise provided in this Declaration and to the fullest extent permitted by the Act, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment by Owners holding at least sixty-seven (67%) of the votes in the Association.

Section 14.5 **Recordation of Amendment**. Every amendment to this Declaration shall be recorded in the Office of the Clerk and Recorder of the County and shall be effective only upon recordation. Amendments approved in accordance with Section 14.2 above shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 14.6 **Required Consent of Declarant to Amendment**. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any

provision of this Declaration reserving Development Rights, Special Declarant Rights, or for the benefit of Declarant or its assignees shall not be effective, unless Declarant and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate upon termination of the Development Rights Period.

Section 14.7 **Interpretation of Amendments.** Recording of amendments to the Declaration shall automatically (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to his or her Lot, and (b) vest in each existing Security Interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any amendment of the Declaration. Reference to the Declaration in any instrument shall be deemed to include all amendments to the Declaration and the Plat without specific reference thereto.

ARTICLE XV FIRST MORTGAGEES

Section 15.1 **Special Rights of First Mortgagees.** Any First Mortgagee (meaning a Mortgagee with first priority over other Mortgagees) of a Mortgage encumbering any Lot in the Community, upon filing a written request therefor with the Association, shall be entitled: (a) to receive written notice from the Association of any default by the Mortgagor of such Lot in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) to examine the books and records of the Association during normal business hours; (c) to receive a copy of financial statements of the Association including any annual financial statement within ninety (90) days following the end of any fiscal year of the Association; (d) to receive written notice of all meetings of Members; (e) to designate a representative to attend any meeting of Members; and (f) to receive immediate written notice as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Real Estate.

Section 15.2 **Priority of First Mortgage Over Assessments.** Except for the priority granted to the Association for Assessments under the Act, each First Mortgagee of a Mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot that accrued prior to the time such holder acquires title to such Lot.

Section 15.3 **Association Right to Mortgage Information.** Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Lot to furnish information to the Association concerning the status of such First Mortgage and the loan that it secures.

Section 15.4 **Notices.** Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, telephone, telecopier or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

ARTICLE XVI DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 16.1 **Development Rights.** In addition to any and all of the rights reserved elsewhere in this Declaration, Declarant hereby reserves for itself and its successors in title (if specifically recited in a deed or grant from Declarant and accepted, in writing, by its successor) until forty (40) years after the recordation of this Declaration (the "**Development Rights Period**"), the following Development Rights, which Development Rights are appurtenant to, benefit, and burden all of the Real Estate:

(a) The right to market, sell, develop and construct the Community in phases, the timing of which shall occur at any time during the Development Rights Period in the sole and absolute discretion of the Declarant.

(b) With respect to Lots owned by Declarant, the right to relocate boundaries between adjoining or otherwise contiguous Lots.

(c) The right to reduce or diminish the Common Elements.

(d) The right to enlarge the Common Elements.

(e) The right to complete or make Improvements within or on any area of the Community owned by Declarant.

(f) The right to create or construct General Common Elements and Limited Common Elements and to convert Lots owned by Declarant into Common Elements.

(g) The right to withdraw all or any part of the Common Elements from the provisions of this Declaration, and the right to withdraw Lots from the provisions of this Declaration if such Lots are owned by Declarant and the right to convey or grant easements on under, over, and across Common Elements to one (1) or more quasi-governmental or governmental entity, including any District(s).

(h) The right to withdraw all or any portion of the real estate from the Additional Property described in **Exhibit B** hereto by recording a notice of the withdrawal of such real estate from the Additional Property (the "**Withdrawn Property**").

(i) The right to add real estate to the Community as follows:

(i) This Development Right may be exercised from time to time with respect to different portions of the Additional Property described in **Exhibit B** hereto including, without limitation, any portion of the Additional Property which Declarant may have previously conveyed (except any Withdrawn Property that has been conveyed to a third party). Notwithstanding the foregoing, Declarant reserves the right to convey all or any portion of the Additional Property to a third party or parties and/or to dedicate the same to any quasi-governmental or governmental entity, including any District, at any time or from time to time, as Declarant deems appropriate, whether for purposes consistent with the Declaration or otherwise. Declarant makes no assurances as to the boundaries of the portions of the Additional Property that will be added at any time or the order that such portions will be added. Furthermore, Declarant has no obligation to subject all or any portion of the Additional Property to the provisions of this Declaration.

(ii) If Declarant exercises its Development Right with respect to any portion of the Additional Property, it has no obligation to exercise such Development Right in all or any other portion of the Additional Property. Any portions of the Additional Property that are not subject to this Declaration may be developed at any time and with such Improvements as Declarant or any subsequent owner of such portions may determine in its discretion.

(iii) The annexation of any Additional Property into the Community by Declarant shall be achieved by recording a plat describing such Additional Property and containing a legal description of the real estate to be annexed into the Community and such other terms and provisions as Declarant may prescribe in accordance with the terms and provisions hereof. Declarant shall have all Special Declarant Rights and Development Rights with respect to the Additional Property added to this Declaration which Declarant has reserved with respect to the Real Estate initially subject to this Declaration. In addition, at the time of filing such plat, Declarant may reserve additional Development Rights or other Special Declarant Rights with respect to the Additional Property so added which Declarant deems necessary or appropriate to complete the development of the Additional Property being annexed or that is otherwise necessary to meet the unique and particular aspects of such property. A plat annexing portions of the Additional Property shall assign an identifying number to each new Lot created by the plat and shall reallocate the Allocated Interests among all Lots effective as of the date the plat is recorded, which allocation shall be done in the manner provided in Section 5.1 and Article VII. All Assessments, other than Individual Purpose Assessments and Default Assessments will be allocated among the Lots in accordance with the formula set forth in **Exhibit C**.

(iv) Declarant reserves the right to complete or make Improvements, as such expansion rights may be approved by the governmental authorities having jurisdiction over the Community; and with respect to Lots owned by Declarant, the right to relocate boundaries between adjoining or otherwise contiguous Lots;

(v) Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water (or such other easements as may be necessary to complete the development of the Community) in, on, under, over and across Lots and Tracts owned by Declarant or the Association for any purpose incident to the development and sale of Lots within the Community.

Section 16.2 **Special Declarant Rights.** In addition to the rights reserved above, Declarant hereby reserves the following Special Declarant Rights during the Development Rights Period, which Special Declarant Rights are appurtenant to, benefit, and burden all of the Real Estate that is subject to this Declaration:

(a) The right to:

(i) maintain sales offices, management offices and residence models on Lots, Tracts or on the Common Elements;

(ii) maintain signs and advertising on the Community to advertise the Community or other communities developed or managed by, or affiliated with Declarant;

(iii) enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community;

(iv) merge or consolidate the Community with another "common interest community" as that term is defined in the Act;

(v) appoint or remove any officer of the Association or any Director originally appointed by Declarant as set forth in Article V;

(vi) create one or more sub-associations within the Community with respect to certain Lots on the Real Estate or Additional Property and in such event Declarant shall cause a supplemental declaration and map to be recorded in the County sufficient to satisfy the requirements therefor as set forth in the Act (collectively, a "**Supplemental Declaration**"); and

(vii) exercise any additional reserved right created by any other provision of this Declaration.

(b) The right to repair any portion of the Community, the right to perform construction work, and the right to store materials in secure areas, in the Lots, Tracts and Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a First Mortgage. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in or assigned under this Declaration. Declarant also has a reserved easement for access and utilities to any properties which Declarant may or had the right to add, even if not added to the Community, including, without limitation, the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate.

(c) The right to allocate areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the Owners to which those specified areas shall become appurtenant including, without limitation, any Additional Property. Declarant may allocate or assign Common Elements or Limited Common Element areas (i) by

making such an allocation in a recorded instrument, or (ii) in the deed to the Lot to which such Limited Common Element shall be appurtenant, or (iii) by recording an appropriate amendment or supplement to this Declaration, or (iv) by recording a supplement to the Plat. Such allocations by Declarant may be made as a matter of reserved right.

(d) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary.

(e) The right to amend the Declaration in connection with the exercise of the Development Rights and Special Declarant Rights.

(f) The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access, paths, walkways, skyways, drainage, recreation areas, parking areas and/or garages, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

(g) The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of parking and/or recreational facilities and/or Common Elements, that may or may not be a part of the Community.

(h) The right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Lots, Tracts and Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a Security Interest.

(i) Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate.

Section 16.3 **No Further Authorizations Needed.** The consent of Owners or holders of Security Interests shall not be required for exercise of any Development Rights, Special Declarant Rights, or other rights of Declarant reserved herein or in the Act, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any such rights on all or any portion of the Real Estate in whatever order determined. Declarant or its assignees shall not be obligated to exercise any Development Rights, Special Declarant Rights, or other rights reserved herein and no guaranty is given that such Development Rights or Special Declarant Rights shall be exercised, or if exercised, the order in which they will be exercised.

Section 16.4 **Term of Reservation of Reserved Rights.** If any right reserved herein by Declarant for the benefit of Declarant is a "Development Right" or a "Special Declarant's Right" as such terms are defined herein or in the Act, then such right shall expire upon expiration of the Development Rights Period. Any such unexpired rights may be transferred by Declarant to any person by an instrument executed by Declarant and its transferee, describing the rights

transferred and recorded in the Office of the Clerk and Recorder of the County, in compliance with Section 304 of the Act.

ARTICLE XVII MISCELLANEOUS

Section 17.1 **Period of Ownership.** The ownership created by this Declaration shall continue until this Declaration is terminated in any manner provided by this Declaration or by law.

Section 17.2 **Supplemental to Applicable Laws.** The provisions of this Declaration shall be in addition and supplemental to the Act, as it may be amended from time to time, and to all other applicable provisions of law. To the extent required by applicable law, Declarant shall annex Additional Property into the Community only upon the prior consent of any Agency that so requires and holds, insures, or guarantees any mortgage in the Community at the time the Additional Property is annexed. Such consent may be given at the time of project approval by such Agency. Declarant shall not exercise any Development Right or Special Declarant right if prohibited by the approval guidelines of any Agency holding, insuring or guaranteeing a First Mortgage.

Section 17.3 **Conveyance of Lots.** All Lots, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

Section 17.4 **Enforcement.**

(a) **Self-Help.** Declarant, the Association, or any authorized agent of either of them may enforce by self-help any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration to the fullest extent permitted by this Declaration and the law.

(b) **Mediation.** If a dispute arises between the Owners, between an Owner and the Association, or between Declarant and the Association or any Owner relating to any provision of the Governing Documents (a "**Dispute**") that is not otherwise resolved informally or by a notice and hearing procedure specified in the Rules and Regulations, the parties thereto shall proceed in good faith to resolve the matter by mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the Dispute informally and confidentially. Mediators cannot impose binding decisions unless the parties to the Dispute agree beforehand that any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate if the entire Dispute is not resolved within thirty (30) days after the date written notice requesting mediation is sent by one party to the other(s) (the "**Mediation Period**").

(c) **Arbitration.** Any Dispute that is not settled prior to the expiration of the Mediation Period shall be settled by binding arbitration administered by an arbitrator (such as the Judicial Arbitrator Group or similar arbitration organization) mutually agreed upon by the parties in

accordance with the American Arbitration Association Commercial Arbitration Rules and shall be held in the Garfield County area. If a Dispute involves Declarant or the Association, no Person shall file a memorandum of *lis pendens* or similar instrument that would encumber or create a lien upon the land owned either by Declarant or the Association. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction. The initiating Person shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the Dispute, the amount involved and the remedy sought. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including attorneys' fees, arbitrator's fees and out-of-pocket expenses of any kind. The term "prevailing party" shall mean the party whose initial position is at the start of the arbitration most nearly upheld in arbitration in the determination of the arbitration. The consideration of the parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding. Except as set forth in Subsection (d) below, Declarant, the Association, and each Owner expressly consent to arbitration as their sole and exclusive remedy, and expressly waive any right they may have to seek resolution of any Dispute in any court of law or equity, and any right to trial by judge or jury.

(d) **Foreclosure of Assessment Lien.** Notwithstanding the foregoing Subsection (c), the Association's power to foreclose an Assessment lien is not subject to arbitration, and the Association may proceed directly to any court of competent jurisdiction to initiate and prosecute such a foreclosure.

(e) **Costs and Fees of Collecting Past Due Assessments.** Notwithstanding the foregoing, if an Owner fails to pay Assessments or any other sums due to the Association in a timely manner, the Association may require reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure without the necessity of commencing formal legal proceedings.

Section 17.5 **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

Section 17.6 **Limitation on Owner's Liability to the Association.** No Owner shall be liable to the Association for the expenses, costs, and fees incurred by the Association for maintenance, repair, or replacement of the Common Elements caused by the negligent or willful act or omission of another Owner or another Owner's Permittees to the extent that the Association is reimbursed for such expenses, costs, and fees by its insurance.

Section 17.7 **Construction Defect Claims.** To the extent permissible under applicable law, including, without limitation, the Act and C.R.S. §13-20-801 et seq. (also known as the Colorado "**Construction Defect Action Reform Act**"), to the extent of any insurance proceeds realized from the Association's property insurance, the Association waives its claims for damages against any contractor or subcontractor involved in the construction of Improvements on the Lots or the Common Elements ("**Construction Defect Claim**"). The Board shall not initiate legal action or proceedings with respect to a Construction Defect Claim, unless it proposes that the Association act on behalf of at least two (2) Owners, and without first (i) distributing to all Owners a written description of the basis for the Construction Defect Claim,

including a good faith estimate of the range of probable costs for legal fees and other expenses that the Association may incur in pursuing the Construction Defect Claim, and (ii) obtaining the written approval of Owners to which at least sixty-seven percent (67%) of all of the eligible votes in the Association are allocated. In addition, the following procedures shall govern all Construction Defect Claims whether brought by the Association or by any Owner:

(a) **Notice.** If any Owner, or the Association on behalf of more than one Owner (hereafter "**Claimant**"), alleges a construction defect in any Improvements on the Lots or Common Elements, Claimant shall notify each Declarant and any contractor against whom such Construction Defect Claim is targeted (hereafter "**Respondent(s)**") in writing stating plainly and concisely (i) the nature of the Construction Defect Claim, including the persons involved and Respondent's role in the Construction Defect Claim; (ii) the legal basis of the Construction Defect Claim (i.e., the legal theory or authority out of which the Construction Defect Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Construction Defect Claim (the "**Construction Defect Notice**"). A Construction Defect Notice that is sent by a Claimant in conformity with the "notice of claim" requirements of the Colorado Construction Defect Action Reform Act shall be deemed to qualify as a Construction Defect Notice under this Section.

(b) **Negotiation and Mediation.**

(i) In addition to satisfying the process described in Subsection 17.7(a) above, the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Construction Defect Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Construction Defect Notice, the Board may appoint a representative to assist the parties in negotiation.

(ii) If the parties do not resolve the Construction Defect Claim within thirty (30) days after the date of the Construction Defect Notice (or within such other period as may be agreed upon by the parties), Claimant shall have thirty (30) additional days to submit the Construction Defect Claim to mediation under the auspices of an independent mediation service designated by the Association or, if the parties otherwise agree, to an independent agency providing dispute resolution services in the Denver, Colorado area.

(iii) If Claimant does not submit the Construction Defect Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Construction Defect Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Construction Defect Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.

(iv) Any settlement of the Construction Defect Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the parties do not settle the Construction Defect Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the parties, the mediator shall issue a notice of termination of the mediation proceedings

("Termination of Mediation"). The Termination of Mediation notice shall set forth that the parties are at an impasse and the date that mediation was terminated.

(c) **Final and Binding Arbitration.**

(i) If the parties do not agree in writing to a settlement of the Construction Defect Claim within fifteen (15) days of the Termination of Mediation, Claimant shall have fifteen (15) additional days to submit the Construction Defect Claim to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. If not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, the Construction Defect Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Construction Defect Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

(ii) This Subsection 17.7(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. Such agreement to arbitrate and all terms relating thereto in this Section 17.7 (including, without limitation, restrictions on Claimants rights to damages) shall apply, without limitation, to any "action" as defined in Section 802.5(1) of the Construction Defect Action Reform Act. The arbitration decision and the award, if any (the "**Decision**"), shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) **Allocation of Costs of Resolving Claims.** Each party, including, without limitation, any Owner and the Association, shall share equally all fees, expenses and charges payable to the mediator(s) and all fees, expenses and charges payable to the arbitrator(s) and the arbitration firm for conducting the arbitration proceeding. Under no circumstances, however, shall any party be entitled to recover any of its attorneys' fees, expenses or other mediation or arbitration costs (except to the extent specifically provided under Section 123 of the Act), from any other party. BY TAKING TITLE TO A LOT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES OR EXPENSES (EXCEPT AS SPECIFICALLY PROVIDED UNDER SECTION 123 OF THE ACT) IN CONNECTION WITH THE ARBITRATION OF A CLAIM UNDER THIS SECTION 17.7. The limitation described above on awarding attorneys' fees and expenses shall not apply to enforcement actions undertaken pursuant to Subsection 17.7(f) below.

(e) **Limitation on Damages.** Claimant shall not be entitled to receive any award of damages in connection with the arbitration of a Construction Defect Claim other than such its actual damages, if any, and the Association and any Owner shall be deemed to have waived their respective rights to receive any damages in a Construction Defect Claim other than actual damages including, without limitation, attorneys' fees and expenses (except as specifically provided under Section 123 of the Act), special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A LOT AND AS A MEMBER, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH

OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY CONSTRUCTION DEFECT CLAIM UNDER SUBSECTION 17.7(c), THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION OR DESIGN DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

(f) **Enforcement of Resolution.** If the parties agree to a resolution of any Construction Defect Claim through negotiation or mediation in accordance with Subsection 17.7(b) above, and any party thereafter fails to abide by the terms of such agreement, or if any party fails to comply with a Decision, then any other party may file suit or initiate proceedings to enforce such agreement or Decision without the need to again comply with the procedures set forth in this Section 17.7. Notwithstanding the terms of Subsection 17.7(d), in such event, the party taking action to enforce the agreement or Decision shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Decision including, without limitation, attorneys' fees and court costs.

(g) **Multiple Party Claims.** Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the Arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action.

(h) **No Amendment; Enforcement by Declarant.** The terms and provisions of this Section 17.7 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Real Estate at the time of such amendment. BY TAKING TITLE TO A LOT AND IMPROVEMENTS CONSTRUCTED BY DECLARANT THEREON, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION 17.7 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND IMPROVEMENTS THEREON AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS SECTION 17.7, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE SAME FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION 17.7 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHT AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL CONSTRUCTION DEFECT AFFECTING THE COMMUNITY OR ANY PORTION THEREOF, INCLUDING ANY IMPROVEMENT ON A LOT.

(i) **Savings Clause.** If any provisions in this Section 17.7 conflict with any applicable federal or Colorado statutes that provide non-waivable legal rights including, without limitation, the Colorado Construction Defect Action Reform Act, the non-waivable terms of such statute shall control. To the extent any provision of this Section 17.7 is interpreted by any court or arbitrator to be void or invalid under C.R.S. §13-21-111.5, such provision shall be interpreted so as to give maximum effect to such provision's intent, as limited by C.R.S. §13-21-111.5.

Section 17.8 **Notices; Registration of Mailing Address.** Each Owner and each First Mortgagee, insurer or guarantor of a First Mortgage, shall register his mailing address with the Association, and notices or demands intended to be served upon the Association, any such Owner, First Mortgagee, insurer, or guarantor shall be delivered by messenger or sent by first class mail, postage prepaid, addressed to the Association at its address set forth below (or such other address of which it gives notice) or to such other person or entity addressed in the name of such person or entity, at such registered address. If any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. The address for the Association shall be the address of its registered agent which (until changed in accordance with the Colorado Nonprofit Corporation Act) shall be: [REDACTED].

Section 17.9 **Non-Waiver.** Failure by a Declarant, the Association, any Owner, First Mortgagee, or any other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 17.10 **Severability.** The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

Section 17.11 **Number and Gender.** Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 17.12 **Captions.** The captions to the articles and sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision hereof.

Section 17.13 **Conflicts in Documents.** In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control. In the case of any conflict between the Bylaws and the Rules and Regulations, the Bylaws shall control. In case of any conflict between this Declaration and the PUD Plan, the more restrictive provision shall control.

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CONSENT OF BENEFICIARY OF DEED OF TRUST

_____ (“_____”), a _____ corporation, as agent (“Agent”) for the ratable benefit of the lenders party to the Loan Agreement (as defined below) from time to time (together with _____, collectively, “Lender”), being the beneficiary of that certain Deed of Trust and Security Agreement from _____ (“Borrower”), dated as of _____ and recorded _____ at Reception Number _____ in the records of the Clerk and Recorder of the County of _____, Colorado (the "Deed of Trust"), hereby consents to the execution and recording of the foregoing Declaration of Covenants, Conditions and Restrictions for River Edge Colorado (the "Declaration") and the River Edge Colorado Final Plan, recorded _____ at Reception Number _____ (the "Plat") and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by the Declaration or the Plat. Notwithstanding the foregoing consent or any other consents that may be executed by Agent, the Deed of Trust, which is a lien recorded before the recording of the Declaration, has and shall continue to have priority over all liens of the River Edge Colorado Property Owners' Association, Inc. (the "Association") created by the Declaration pursuant to C.R.S. § 38-33.3-316, it being the express intention and agreement of Borrower and Agent that the Deed of Trust shall have priority over all such liens of the Association. “Loan Agreement” means that certain Loan and Security Agreement dated as of _____ by and among Borrower, Agent and Lender.

EXHIBIT A
REAL ESTATE

EXHIBIT A

EXHIBIT B
ADDITIONAL PROPERTY

EXHIBIT B

EXHIBIT D
FORM OF PARTY WALL AGREEMENT AND
MAINTENANCE EASEMENT

EXHIBIT D

EXHIBIT E
PERMITTED EXCEPTIONS

EXHIBIT F
CONSERVATION EASEMENT BUILDING PROTECTION AREA

FILE NAME: \\DEN-SRV1\PROJECTS\CARBONDALE INVESTMENTS\06.00 DESIGN TASKS\06.02 - TASK 02 PRELIM PLAT\ENGINEERING & DESIGN\CAD\EXHIBITS\MISC REPORT FIGURES\PU0-CORSMAP.DWG
 PLOT DATE/TIME: 1/17/2011 11:47 AM
 PLOTTED BY: CHRIS LOWRY
 PLOT STYLE: 8140CAD_STANDARD.CTB



Owner/Developer:



River Edge
 COLORADO

Carbondale Investments, LLC
 7999 HWY 82
 Carbondale, CO 81623

Phone No:
 970.456.5325

Title:
BUILDING RESTRICTION AREA

Prepared by:
8140 Partners, LLC

Date:
01/14/2011

Exhibit:
F

EXHIBIT G
OPEN SPACE MANAGEMENT PLAN



OPEN SPACE MANAGEMENT PLAN

RIVER EDGE COLORADO
GARFIELD COUNTY, COLORADO

OWNER/APPLICANT:

CARBONDALE INVESTMENTS, LLC
7999 HWY 82
CARBONDALE CO 81623
970-456-5325

CONSULTANT:

8140 PARTNERS, LLC
PO BOX 0426
EAGLE, CO 81631

JANUARY 14, 2011

OPEN SPACE MANAGEMENT PLAN

RIVER EDGE COLORADO GARFIELD COUNTY, COLORADO

I. INTRODUCTION

A. BASIS

This Open Space Management Plan ("Plan") has been prepared in support of an application for PUD Plan Review ("Rezoning") and Subdivision Review ("Preliminary Plan") for the proposed River Edge Colorado ("Project", "REC", or "REC PUD") in accordance with the requirements of the Garfield County Unified Land Use Resolution of 2008 ("ULUR"), as amended. This Plan fulfills the requirements of Section 5-502.C.10 of the ULUR.

B. PURPOSE AND SCOPE OF PLAN

The primary purpose of this Plan is to provide preliminary open space management framework for the Project. This Plan should be updated and supported by a detailed management plan for open spaces developed in association with each Final Plat based on the specific planting and programs intended to be placed within each Open Space Tract.

II. PROJECT LOCATION

The Project is located along State Highway 82 ("SH 82") between the City of Glenwood Springs and Town of Carbondale near the junction of County Road 110/113 ("CR 113") and SH 82. The property is located almost entirely west of the Roaring Fork Transit Authority ("RFTA") right-of-way and east the Roaring Fork River and the Roaring Fork Conservancy ("RFC") Conservation Easement (i.e., Grant of Conservation Easement dated February 3, 2000, recorded at Reception Number 559036 and survey map, recorded December 24th, 2008, recorded at Reception Number 760571 in the real property records of Garfield County, Colorado). The Project straddles Cattle Creek which is also located within the RFC Conservation Easement. The Project covers approximately 160 acres ("Project Site") as shown and described on the PUD Plan (Series PUD01-03) of the Drawing Package.

III. OPEN SPACE MANAGEMENT

A. TITLE TO OPEN SPACE

Title to parcels shown as Open Space Tracts on each Final Plat within the REC PUD will be conveyed to River Edge Colorado Property Owners' Association, Inc. ("POA") by conveyance deed upon filing of the Final Plat for recording with the Garfield County Clerk and Recorder. All Open Space Tracts shall be limited to the uses and restrictions imposed by the REC PUD, including the River Edge Colorado Planned Unit Development

Guide (“PUD Guide”), PUD Plan, the Declaration of Covenants, Conditions and Restrictions for River Edge Colorado (the “CCRS”), and other restrictions recorded against such tracts.

B. OPEN SPACE TRACTS AND USE

The land intended to serve as the Open Space within the REC PUD is divided into the following areas: Tracts AH, AN, AP, AQ, AU, BB, BH1, BH2, BN, BO, and CE as depicted on the PUD Plan. The Open Space Tracts are depicted on the PUD Plan (Series PUD01-03), the Preliminary Plan (Series PRPN01-03), and Open Space Plan (Series OS01) of the Drawing Package.

Physical improvements upon the Open Space Tracts will be limited to stormwater management controls, emergency vehicle access and utility maintenance roads, traffic control, pedestrian and use-awareness signage, soft trails, the Glenwood Ditch and other utilities and related devices and infrastructure facilities as shown on the PUD Plan and as more specifically depicted on any Final Plat within the REC PUD; physical improvements provided for by the easements identified on any Final Plat; and physical improvements provided for by the use allowances contained in the PUD Guide.

C. MANAGEMENT OF THE OPEN SPACE TRACTS

1. GENERAL MANAGEMENT

Open Space Tracts will be maintained by the POA. Management shall follow the program prescribed herein and any detailed management plan provided at the time any Open Space Tract is finally platted.

2. MANAGEMENT OF STORMWATER CONTROLS WITHIN OPEN SPACE TRACTS

The POA shall be responsible for maintaining the stormwater controls located in the Open Space Tracts in good, clean, unobstructed and proper operating condition. The maintenance obligations shall include normal and routine surface maintenance, mowing of grass, and removal of debris, as well as any structural or vegetative maintenance which may be required for proper operation and performance of the stormwater controls.

3. MANAGEMENT OF OPEN SPACE TRACTS

The POA will supervise, manage, operate, examine, inspect, care for, remove litter and debris, and maintain the Open Space Tracts. Vegetation will be kept in a natural state, provided that, the POA may, but is not required to remove or prune trees and engage in other vegetation management activities necessary to maintain the health of the naturalized landscape, ensure protection from erosion, repair damage to areas resulting from natural causes, and meet the requirements of the RFC Conservation Easement recorded in Book 1171 at Page 929 in the records of the Garfield County Clerk and Recorder and RFTA Open Space Easement recorded in Book 1143 at Page 1, as amended at Boo 1217 at Page 593, in the records of the Garfield County Clerk and Recorder. Permitted uses in the Open Space Tracts areas are defined in the PUD Guide and shall

include hiking, walking, nature study (including bird watching) and the study of other flora and fauna, picnicking and such other passive recreational uses as may be approved by the POA in accordance with the PUD Guide.

4. MANAGEMENT OF PROPOSED TRAILS

Recreational trails will be established within the Open Space Tracts as shown on the PUD Plan and as more specifically depicted on any Final Plat within the REC PUD. The POA will supervise, manage, operate, examine, inspect, care for, remove litter and debris, and maintain the trails within the Open Space Tracts. Use of the trails will be as provided in paragraph, above. Trails within Open Space Tracts shall be closed as necessary in accordance the CCRS and PUD Guide provisions such closures to accommodate Great Blue Heron ("heron") nesting ("heronry") and winter use of these areas by American Elk and Mule Deer.

5. MANAGEMENT OF WEEDS

Open Space Tracts will remain in a natural or turf condition following development in accordance with the landscape standards contained in the PUD Guide. The POA will maintain these areas free of noxious weeds following development and will assess the presence of noxious weeds as detailed in paragraph E below. Herbicides and even mowing will be necessary at early stages in the revegetation of the Open Space Tracts, especially the first two years. Timing of herbicides is critical so as to limit potential injury to desirable plants. Careful spot spraying will be necessary (as opposed to broadcast spraying) as noxious weeds are located among native forbs and shrubs. Noxious weeds abatement actions will be initiated by the POA, if the POA's annual assessment reveals that greater than 5% noxious weed cover (including all State and County listed weed species) as measured during the growing season within any Open Space Tract. Weeds that occupy >5% of foliar cover shall be treated in accordance with the State Noxious Weed Act. Such actions, when taken, should be reported to Garfield County Planning and Building with a brief description of the noxious weeds present and how they were treated.

6. MANAGEMENT OF BUFFERS

Heron buffers have been located within the Open Space Tracts in accordance with the PUD Plan and PUD Guide and are identified in "Buffer Areas" on each Final Plat. The plantings within these "Buffer Areas" shall be maintained in accordance with the planting scheduled and detailed maintenance plan prepared as part of the Final Plat so long as active heronries remain within 200 meters of these areas. Landscaping and berming required by the RFC Conservation Easement and RFTA Open Space Easement shall also be maintained in accordance with the planting scheduled and detailed maintenance plan prepared as part of the Final Plat and made a part of the CCRS.

7. MANAGEMENT OF VEGETATION

All vegetation and planting shall be managed in accordance with the landscaping provisions of the PUD Guide. Disturbed soils shall be reclaimed in accordance with the PUD Guide.

8. LIMITING THE RISK OF FIRE

Nothing in this Plan shall be construed as limiting the rights of the POA from undertaking management activity with the Open Space Tracts which is necessary to limit the risk of fire. Such activity may include, but not be limited to, selective tree cutting, pruning and removal, or other activity which is generally consistent with recognized wildfire management and wildfire risk management measures.

D. COSTS OF MANAGEMENT

All costs associated with the management of Open Space Tracts shall be the responsibility of the POA in accordance with the CCRS.

E. INSPECTION OF OPEN SPACE TRACTS

A qualified landscape architect, biologist or other qualified person contracted by the POA shall assess the Open Space Tracts on an annual basis during construction of roadways, stormwater controls and initial clearing of home sites, and thereafter once every three (3) years, for purposes of determining whether the Open Space Tracts are being properly managed in accordance with this Plan. The POA will require such person provide to the POA, a report with recommendations for management of the Open Space Tracts in accordance with this Plan, if any, following each visit.

