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Kay Weinland Routt County, CO DECL COV R 226.00 D 0.00

**DECLARATION
OF
PROTECTIVE COVENANTS
FOR
RED HAWK VILLAGE SUBDIVISION
A
PLANNED UNIT DEVELOPMENT**



DECLARATION
OF
PROTECTIVE COVENANTS
FOR
RED HAWK VILLAGE SUBDIVISION

This Declaration is made as of the 3rd day of April, 2006, by Sagebrush Trail Holdings, LLC, a Colorado limited liability company (the "Declarant").

WITNESSETH

WHEREAS, Declarant owns certain real property in Routt County, Colorado, on which it intends to establish a planned residential development, to be known and identified as Red Hawk Village Subdivision ("Red Hawk Village") and Declarant desires to create a "Common Interest Planned Community" (as defined in the Colorado Common Interest Ownership Act, C.R.S. Section 38-33.3-101 et seq., or any successor statute as they may be amended from time to time (the "Act")) on the Property, which shall constitute a "Planned Community" (as defined in the Act), and to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein, pursuant to the provisions of the Act, for the purpose of protecting the value and desirability of the Property and for the purpose of furthering a plan for the improvement, sale and ownership of the Property; and

WHEREAS, Declarant establishes and executes this Declaration in order to regulate, govern, and provide for the use, occupancy, and operation of Red Hawk Village, and to support and maintain the quality of the Subdivision (as hereinafter defined), and property values, and to assist in establishing Red Hawk Village as a community; and

WHEREAS, Declarant owns the Initial Property (hereinafter defined and more fully described on Exhibit "A"), which is hereby submitted to the terms of this Declaration;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant, for itself, its successors, assigns and grantees, hereby declares that the Initial Property, and additions thereto made pursuant to Article 2, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, limitations, terms, obligations, charges and liens hereinafter set forth.

ARTICLE 1
DEFINITIONS

The recitals contained hereinabove are true and correct and are incorporated herein by reference. The following words and terms, when used in this Declaration, or in any amendment, supplement or exhibit thereto, shall, unless the context clearly otherwise indicates, have the following meanings. Other capitalized terms, if any, shall have the meanings given them in the section wherein they are first defined.



1.1. "Architectural Review" means the requirements of this Declaration that certain improvements or alterations to Lots or existing Improvements must be reviewed and approved, and where the context indicates, the review and approval procedures of Article 9 of this Declaration.

1.2. "Architectural Review Committee" or "ARC" means the Board, or if the Board so determines, a committee of not fewer than three (3) persons appointed by the Board, which shall consider and act on applications for Architectural Review approval pursuant hereto. Notwithstanding the foregoing, Declarant shall act as the Architectural Review Committee prior to the Turnover Date, except for any period of time during which Declarant waives the right so to act in writing.

1.3. "Articles" means the Articles of Incorporation of the Association, as they may be amended from time to time.

1.4. "Assessment" means a charge levied by the Association in accordance herewith against a Lot and its Owner. The following meanings shall be given to the following types of Assessments:

(a) "Common Expense Assessment" means an Assessment levied against all Lots and Owners for their proportionate share of the Common Expenses.

(b) "Regular Assessment" means the recurring periodic Assessment for each Owner's share of budgeted Shared Expenses.

(c) "Special Assessment" means any Assessment made under the authority of this Declaration other than a Regular Assessment, typically for unusual, non-recurring, or unbudgeted Common Expenses. Special Assessments may include, but shall not necessarily be limited to, amounts reasonably necessary to supplement Regular Assessments, and amounts reasonably necessary to defray costs of acquiring, maintaining, operating, repairing, improving, or replacing Common Property.

1.5. "Association" means The Red Hawk Village Homeowners Association, Inc., a Colorado not-for-profit corporation, its successors and assigns.

1.6. "Board" means the Board of Directors of the Association.

1.7. "Bylaws" means the Bylaws of the Association, as they are amended from time to time.

1.8. "Capital Contribution" means a one time payment and contribution to the Association in the amount of \$250.00, or such other amount as may be set out in an agreement for sale of a Lot between Declarant and an Owner .

1.9. "Code" means the Routt County Zoning Resolution and the Routt County Subdivision Regulations, as they may have been amended effective as of the date this Declaration is recorded.



1.10. "Common Expenses" means the actual and estimated cost of the following:

- (a) Maintenance, repair, replacement, ownership, improvement, and operation of the Common Property and any other area(s), to the extent the Association is responsible for the maintenance thereof pursuant to this Declaration.
- (b) Obligations of the Association in excess of revenues, whether attributable to unpaid Assessments or Owner Charges, or otherwise.
- (c) Administration and management of the Association.
- (d) Any insurance obtained by the Association.
- (e) Reasonable reserves as determined in accordance herewith.
- (f) Any other item or items designated herein as a Common Expense, or reasonably or necessarily incurred by the Association, or in furtherance of the purpose of the Association, or in discharge of any obligations expressly or impliedly imposed on the Association by this Declaration, or by law.
- (g) Utility charges and deposits therefore in the carrying out of Association obligations hereunder, which may include electrical service and other charges to maintain and operate street lights, irrigation, and other facilities within the Subdivision, if and to the extent such facilities are installed by Declarant or by the Association.
- (h) Principal and interest payments on any borrowed indebtedness of the Association, as well as any fees, costs, and expenses incurred with respect to such borrowing.

1.11. "Common Property" means all real property and interests therein, including easements, licenses and servitudes, owned by, or granted or leased to, the Association, or the use of which has been granted to the Association, together with all improvements thereto. Common Property may also include any personal property acquired by the Association if designated Common Property.

1.12. "Common Interest Ownership Act" means the provisions of the Colorado Common Interest Ownership Act Sections 38-33.3-101 *et seq.*, Colorado Revised Statutes, as it may be amended from time to time ("the Act"). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

1.13. "Community Documents" means this Declaration, the Articles and Bylaws, and their respective exhibits, as they may be amended from time to time.

1.14. "Completion Date" means the earlier to occur of (a) thirty (30) days after all Lots in all phases of the Subdivision have been conveyed by Declarant, or (b) that date designated by Declarant in writing.



1.15. "County" means Routt County, Colorado, a political subdivision of the State of Colorado. (Where County action is contemplated hereby, that action may be taken by the agent, official or other designee as provided by the Code, as it may be amended from time to time.)

1.16. "Declarant" means Sagebrush Trail Holdings, LLC, a Colorado limited liability company, or its successor(s) or assign(s) as such Declarant, who takes title to any portion of the Property or any other land that may be subjected to this Declaration for the purpose of development and/or sale, and who is designated as a "Declarant" in an instrument recorded in the Public Records.

1.17. "Declaration" means this document, together with all amendments and supplements hereto, and where the context permits, all exhibits hereto.

1.18. "Deficiency" means operating expenses incurred by the Association which exceed the sum of (a) Assessments receivable from Members other than the Declarant, and (b) other income of the Association, which may include Capital Contributions.

1.19. "Delinquency Charges" mean late charges, interest, costs and fees which the Association is entitled to recover pursuant to Section 5.13.

1.20. "District" means the Morrison Creek Metropolitan Water and Sanitation District.

1.21. "Family" or "Single Family" means one natural person, or two or more natural persons who commonly reside together as a single housekeeping unit, some of whom are related by blood, marriage or adoption to one another.

1.22. "Fiscal Year" means the calendar year, or such other twelve month period designated or adopted by the Board to be the Fiscal Year of the Association.

1.23. "Guest" means any person (other than the Owner and his Family (or if the Lot is subject to a Lease, the Tenant and his Family) who is physically present in, or occupies a Lot on a temporary basis at the invitation of the Owner, Tenant, or other permitted Occupant without the payment of consideration.

1.24. "Governmental Approvals" means all and singular those agreements, approvals, orders, authorizations, stipulations, conditions, permits, requirements and other development orders, issued, enacted, adopted or otherwise made applicable by any governmental agency or authority, as they may be amended from time to time, which authorize, permit, approve or otherwise regulate the development and use of the Property, including but not limited to, the County's approval of Red Hawk Village Subdivision and the PUD Plan.

1.25. "Home" means the Permitted Improvement located upon a Lot, containing a single family residence.

1.26. "Improvement Standards" means those mandatory standards, requirements, prohibitions and criteria for the design, construction and alteration or Improvement to a Lot, as set forth in Section 9.11 of this Declaration.



1.27. "Improvements" means buildings, garages, outbuildings, sheds or other structures, landscaping, sod, grass or other ground cover, borders, planters, irrigation systems, fences, walls, tennis courts, other athletic facilities and installations, screen enclosures, pools, patios, solar energy device, decorative structures, containers or other installations, devices, equipment, or any other improvement on a Lot that will alter the appearance of the Lot or existing Improvements thereto when viewed from adjacent Lots or Common Property or an adjacent street or road.

1.28. "Initial Property" means that property in Routt County, Colorado, described on Exhibit "A", attached hereto and made a part hereof.

1.29. "Landscaped Area" means areas within Common Property containing landscaping.

1.30. "Lease" means the grant by an Owner to a Tenant of a temporary right of use and possession of the Owners Lot for valuable consideration.

1.31. "Lien Notice" means a "Notice of Lien," "Claim of Lien" or other notice filed by the Association in the Public Records setting forth the amounts claimed due the Association as to any one or more Lots and its or their Owner.

1.32. "Listed Parties" means Declarant, the District, the Association, and any of their successors, assigns, officers, directors, committee members, employees, management agents, contractors or subcontractors.

1.33. "Lot" means a discrete residential lot as reflected on the Plat.

1.34. "Member" means, at any given time, every person or entity then qualified for membership in the Association. The Association has three (3) types of members:

(a) "Builder Member" means a builder, contractor or other Owner who has purchased a Lot for the purpose of constructing improvements thereto for resale.

(b) "Declarant Member" means the Declarant, and its successors or assigns as such Declarant, prior to the Turnover Date.

(c) "Regular Member" means any Member other than a Builder Member or Declarant Member.

1.35. "Non-Operational Controversy" means any pending or potential Proceeding, other than an Operational Proceeding.

1.36. "Occupant" means, when used in connection with a Lot or Home, a person who is physically present in a Home on two or more consecutive days, including staying overnight.

1.37. "Occupy" means the act of staying overnight in a Home.



1.38. "Open Spaces" means Common Property areas within the Subdivision that are primarily open, and often relatively unimproved.

1.39. "Operational Proceeding" means any Proceeding commenced by the Association (i) to enforce the payment of an Assessment or Owner Charge, or to foreclose a lien for an Assessment or Owner Charge, as provided for in the Declaration, or (ii) otherwise to enforce compliance with the Declaration or the rules and regulations by, or to obtain other relief from, any Owner, Tenant, or Occupant who has violated a provision thereof, or (iii) to construe or interpret the Community Documents or the rules and regulations, or (iv) to file any compulsory counterclaim or any permissive counterclaim that would be an Operational Proceeding if commenced by the Association, or (v) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association, and in the ordinary course of business, or (vi) to protect against any other matter when waiting to obtain the approval of the Owners as hereinafter provided will create a substantial risk of irreparable injury to the Association or its Members, or (vii) to enforce or collect any fine levied pursuant to the Bylaws, or (viii) for any other action for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed ten thousand (\$10,000.00) dollars in the aggregate.

1.40. "Original Improvements" means the Improvements established as part of the original construction and development of the Subdivision.

1.41. "Owner" means the single or multiple owner(s) of record of the fee simple title to any Lot subject to this Declaration, excluding those having such interest merely as security for the performance of an obligation, and excluding Declarant prior to the Turnover Date.

1.42. "Owner Charge" means a charge, other than an Assessment, levied by the Association in accordance herewith against a Lot and it's Owner.

1.43. "Permitted Improvements" means those Improvements to Lots authorized under the terms of this Declaration, being those established as part of the original construction and development of the Subdivision (Original Improvements), and such additions, alterations, and replacements thereof as may be authorized and implemented after Architectural Review in accordance with the terms hereof.

1.44. "Planned Unit Development Plan" or "PUD Plan" means the County approved, site specific development plan, as recorded in the public records.

1.45. "Plat" means the subdivision plat(s) of the Property as recorded in the Public Records. The Plat may designate the Subdivision as "Red Hawk Village" preceded or followed by any appropriate phase designation.

1.46. "Proceedings" means any pending or potential law suit, bankruptcy proceeding, administrative proceeding, arbitration, mediation or governmental proceeding.

1.47. "Prohibited Vehicles" means any oversized truck, tractor, trailer or other vehicle or equipment, which exceeds a length of twenty (20') feet or a height of seven (7') feet, or which is



determined by the Board pursuant to Section 8.2(d) of this Declaration to be a Prohibited Vehicle, but shall not include standard manufacturers trucks commonly found in and around Routt County, Colorado.

1.48. "Property" means the Initial Property at the time this Declaration is first recorded, and thereafter, at any given time, all lands then subject to this Declaration in accordance with Article 2.

1.49. "Public Records" means the Public Records of Routt County, Colorado.

1.50. "Recreation Area" means a part of the Common Property that may be developed for use by Owners and Occupants for recreational purposes.

1.51. "Required Actions" means such maintenance, repairs, clearing of debris, or removal of prohibited materials, or other corrective functions that the Association may, after notice, perform pursuant to Section 8.12 hereof.

1.52. "Shared Expenses" means expenses incurred by the Association pursuant to this Declaration that are shared by some or all of the Owners, including Common Expenses.

1.53. "Standards" means such design, material and locational criteria and standards for proposed Improvements, adopted by the ARC pursuant to Section 9.5 of this Declaration.

1.54. "Subdivision" means the Property.

1.55. "Supplemental Declaration" means an instrument filed in the Public Records, supplementing and amending this Declaration by submitting additional property to the terms of this Declaration. A Supplemental Declaration may also amend provisions of this Declaration, and may provide different provisions with respect to portions of the Subdivision submitted thereby.

1.56. "Surface Water Management System" means that storm water management system within the Subdivision, including but not necessarily limited to the drainage easements as shown on the Plat, and all of that system designed, constructed, or implemented to control discharges which are necessitated by snow melt runoff and rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

1.57. "Surface Water Management System Facilities" means those facilities that form a part of the Surface Water Management System, and shall include, but not necessarily be limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas.

1.58. "Tenant" means a person to whom an Owner has granted a temporary right to the use and occupancy of that Owner's Lot, pursuant to a Lease.

1.59. "Turnover Date" and/or the "Declarant Control Period" shall mean the period of Declarant control, which terminates no later than the earlier of:



(a) sixty (60) days after conveyance, on a cumulative basis, of seventy-five percent (75%) of all Lots in the ordinary course of business to Owners who are not the Declarant; or

(b) two (2) years after the last conveyance of a Lot by the Declarant to a Lot Owner in the ordinary course of business (collectively the "Turnover Date").

1.60. "Utilities" means electrical power, water (both potable and for irrigation purposes), sanitary sewers, garbage and trash collection and disposal, cable television and other telecommunication services, drainage, security systems, telephone and other communication systems, and all public service and convenience facilities. The Board shall have the authority to classify any service or facility not so specified herein as a Utility.

1.61. "Voting Interests" means the voting rights established in the Community Documents by which the Owners of each Lot, collectively, are entitled to one vote in Association matters.

**ARTICLE 2
PROPERTY SUBJECT TO DECLARATION**

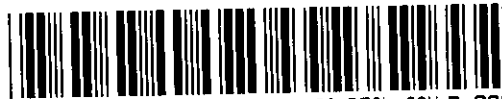
2.1. **Property Subject to Declaration.** The Initial Property is subject to this Declaration. Additional land may be subjected to the Declaration, and thereby become a part of the Property, (a) by Declarant, without consent of the Association or anyone else prior to the Turnover Date, or (b) by the owner of such land with the consent of (i) the Declarant prior to the Completion Date and (ii) the Association thereafter. Association consent shall require approval by the Owners of sixty-seven (67%) percent of all Lots then in the Subdivision.

2.2. **Procedure for Submission.** Additional lands may be subjected to this Declaration pursuant to Section 2.1, whether a phase or otherwise, by a Supplemental Declaration, executed as required by Section 2.1, and recorded in the Public Records and in accordance with County approvals. A Supplemental Declaration may modify any one or more of the Improvement Standards of Section 9.11 with respect to Lots thereby added, and may also provide additional or alternate terms and provisions applicable only to such phase.

**ARTICLE 3
MEMBERSHIP IN ASSOCIATION**

3.1. **Membership.** Membership is appurtenant to the ownership of a Lot and terminates upon the termination of an Owner's interest in a Lot. Each Owner accepts membership and agrees to be bound by this Declaration, the Articles and By-Laws, respectively, and the rules and regulations adopted pursuant thereto.

3.2. **Voting Rights.** There are three types of membership, Regular Membership, Builder Membership and Declarant Membership. Regular Members are all Owners other than the Builder Members and the Declarant Members. Regular Members and Builder Members are entitled to one vote for each Lot in which such Members hold an ownership interest. There is one



vote for each Lot. Declarant Members are the Declarant and any successor or assignee of Declarant having an interest in the Subdivision for the purpose of development and sale. The Declarant has three times the total number of votes held by Regular Members and Builder Members, plus one. If there is more than one Declarant Member, they shall divide and apportion their votes as they may agree. Declarant Membership shall terminate on the Turnover Date. After the Turnover Date, Declarant Members who then own Lot(s) shall become Regular Members.

3.3. Control of the Board and Declarant Control.

(a) The Declarant shall have the powers reserved in C.R.S. Section 38-33.3- 303(5) of the Act to appoint and remove officers and members of the Board of Directors during the Declarant Control Period. During the Declarant Control Period:

(i) Not later than sixty (60) days after conveyance, on a cumulative basis, of twenty-five percent (25%) of the Lots to Owners other than the Declarant, at least one member and not less than twenty-five (25%) of the members of the Board of Directors must be elected by Owners other than the Declarant;

(ii) Not later than sixty (60) days after conveyance, on a cumulative basis, of fifty percent (50%) of the Lots to Owners other than a Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

(b) At any time prior to the Turnover Date, the Declarant may relinquish the right to appoint and remove members of the Board of Directors and officers, but may require Declarant approval of actions of the Board of Directors or the Association specified by the Declarant in such relinquishment notice which shall be recorded and executed by Declarant. As to such actions, Declarant may give its approval or disapproval at its sole discretion and option, and its disapproval shall work to invalidate such action by the Board of Directors or the Association.

(c) Not later than the Turnover Date, the Owners (including Declarant) shall elect a Board of Directors of at least three (3), but no more than five (5) members, at least a majority of whom must be Owners other than Declarant, and the Board of Directors shall elect the officers, with such Board of Directors and officers to take office upon election. Within sixty (60) days after Owners elect a majority of the members of the Board of Directors, Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by Declarant, including without limitation those items specified in C.R.S. Section 38-33.3-303(9) of the Act.

**ARTICLE 4
 COMMON PROPERTY**

4.1. General Description of Common Property. The Common Property will include such real property and interests therein, with any improvements thereto, including easements, rights of way, licenses, use rights and servitudes, and items of tangible personal property, (a) that are now or may hereinafter be specifically set aside, designated, reserved, granted, assigned, transferred or deeded to the Association, or (b) that some use thereof or right therein is made

available to the Association and/or its Members, or (c) that is otherwise established and designated as Common Property by Declarant, or by others with the written consent of Declarant prior to the Completion Date, and with the written consent of the Association thereafter. Common Property may also be acquired by the Association after the Completion Date. Common Property shall include, but is not necessarily limited to, those ownership and other interests, improvements, systems, facilities, items and other things described as Common Property in this Declaration or any Supplemental Declaration or amendment hereto, or so designated on the Plat or in any instrument establishing, transferring or creating such interest or right.

4.2. Development, Identification and Addition of Common Property. Initial Common Property located within, or associated with, the Initial Property is described in this Declaration as originally recorded. Additional Common Property, or extensions to or enlargements of existing Common Property, may be located within, or be associated with, additional lands submitted. Such additions to the Common Property will be described in Supplemental Declarations adding such additional land, Common Property or both, on the Plat as it may reflect the additional land, or in amendments to the Declaration.

4.3 Uses and Purposes of Common Property. The Subdivision may contain, or have associated with it, Common Property intended or developed primarily for specific uses and purposes, as initially established by the Declarant. The Common Property shall be maintained by the Association. The primary uses and purposes initially established shall in no event preclude Common Property from having other or ancillary uses or purposes, nor shall it limit the rights of Declarant, prior to the Completion Date, and the Association thereafter, from providing additional uses of Common Property consistent with its primary use and purposes, the Governmental Approvals and this Declaration.

(a) Landscaped Areas. Landscaped Areas may be located throughout the Subdivision, whether on Common Property or a Common Property easement, and provide a visual amenity and enhancement to the Subdivision, and in some instances comply with the requirements of the Governmental Approvals. The Association shall maintain the Landscaped Areas in a good condition, with the expense thereof being a Common Expense. No Landscaped Area may be altered in contravention of the Governmental Approvals. Common Property devoted to other purposes may contain Landscaped Areas as a part thereof.

(b) Surface Water Management System Facilities. Some of the Surface Water Management Facilities are located on land that is designated Common Property pursuant to this Declaration, are located on land that is owned by the Association, or located on land that is subject to an easement in favor of the Association and its successors. All such land, interests in land, and facilities that form a part of the Surface Water Management System shall be Common Property.

(c) Open Spaces. Open Spaces may be left substantially in their natural state, and be available for passive use such as walking and hiking and exercise, but may also be used to provide access to other Common Property for maintenance or other purposes. Open Space may be combined with Landscaped Areas, and serve as a visual amenity for the Subdivision.



(d) **Recreational Areas.** Recreation Areas may be established on certain parts of the Common Property, and may contain such active or passive facilities as the Declarant may determine, subject to the requirements of the Governmental Approvals.

(e) **Other Easements.** Any other easements or other use rights granted to the Association, including those private easements reflected on the Plat, or in other instruments, which easements are granted or reserved either to the Association, to the Declarant and subsequently assigned to the Association, or which are appurtenant to the Subdivision, or parts thereof.

Common Property areas may be developed or used for more than one use or purpose. For example, certain tracts of Common Property may include Landscaped Areas and Surface Water Management System Facilities or, a Common Property tract may contain Open Spaces and portions of a Recreation Area. For such Common Property committed to multiple uses or purposes, all restrictions and requirements for each designated use or purpose shall apply, and in the event of any conflict, the more restrictive provision shall apply.

4.4. Common Property. Common Property located within, or associated with, the Subdivision is as follows:

(a) **Initial Common Property.**

- (1) Common Property as shown on the Plat.
- (2) Surface Water Management System Facilities located within the Subdivision.

4.5. Members' Easement of Enjoyment. Declarant grants to each Owner a non-exclusive right and easement of the use, access, and enjoyment in and to the Common Property for its intended purposes. Said easement is appurtenant to, and passes with such Owner's Lot. An Owner may delegate and extend his right of use and enjoyment of the Common Property to the members of his Family, and, with respect to a Lot subject to Lease, to the Tenant, and their respective invitees, or social Guests, subject to this Declaration. No Owner may exempt himself from personal liability for Assessments or Owner Charges, nor release the Lot owned by him from the liens and charges for such Assessments and Owner Charges by waiver of the use and enjoyment of the Common Property, or the non-use thereof, or by abandonment of his Lot. The rights and easements of enjoyment in the Common Property are subject to reasonable rules and regulations governing the use of the Common Property adopted by the Board pursuant hereto, the terms of this Declaration, the Governmental Approvals, the rights of County and other governmental agencies having jurisdiction.

4.6. Title to Common Property. Declarant agrees that it will transfer the Common Property to the Association prior to or contemporaneously with the transfer and conveyance by Declarant of one or more Lots to a person or entity other than Declarant or an entity controlled by Declarant or a Builder Member, such transfer to be free and clear of all liens and encumbrances, except ad valorem taxes for the year in which the transfer takes place, the provisions of this Declaration, and easements, other rights and reservations of record. Any conveyance shall be by Special Warranty Deed, and the Association agrees to accept such deed. Declarant shall not be obligated to provide any title insurance or a survey of the Common Property. Prior to such transfer, Declarant may retain ownership of any and all parts of the Common Property, subject to

the Members' easement of use and enjoyment, and may encumber all or any part thereof by such mortgages as Declarant may determine. Notwithstanding retained ownership by Declarant, the Association shall be required to carry out its maintenance and other responsibilities with respect to such parts of the Common Property as have been made available for the use of the Members.

ARTICLE 5 ASSESSMENTS AND OWNER CHARGES

5.1. Personal Obligation and Lien for Assessments.

(a) Personal Obligation. Each Owner covenants and agrees to pay to the Association all Assessments levied with respect to each Lot in which such Owner has an ownership interest. Each Assessment, together with Delinquency Charges levied with respect thereto, is the personal obligation of the Owner of a Lot at the time when the Assessment is due and shall remain the personal obligation of such Owner notwithstanding that such Owner may no longer own the Lot. Additionally, an Owner is jointly and severally liable with the previous Owner of a Lot for all unpaid Assessments (and applicable Delinquency Charges) that come due up to the time of transfer of title to the Lot. This liability is without prejudice to any rights and obligations the successive Owners may have for the ultimate allocation of liability between them in accordance with any agreements they may have.

(b) Lien. The Association has a lien on each Lot to secure the payment of all Assessments levied with respect to such Lot, together with Delinquency Charges thereon. Except as otherwise provided in Section 5.12, the lien of the Association is effective from, and shall relate back to, the date upon which this Declaration is recorded in the Public Records, with respect to the Initial Property, and the date a Supplemental Declaration submitting additional property is recorded in the Public Records with respect to Lots subjected to this Declaration thereby. The Association may record in the Public Records a Lien Notice setting forth amounts claimed due the Association as to any one or more Lots. The execution and recording of such Lien Notice shall not, however, be required in order for the continuing lien for Assessments to be valid, provided that the recording of such Lien Notice may determine the priority of such lien. The Lien Notice shall secure all unpaid Assessments which are then due and which may accrue subsequent to the recording of the Lien Notice, as well as all Delinquency Charges.

5.2. Purposes of Assessments. Assessments levied by the Association shall be used only for the purposes set forth in this Declaration, the Articles and Bylaws.

5.3. Budget. For each Fiscal Year, the Board shall prepare and adopt an annual budget reflecting the estimated revenues and expenses for the Fiscal Year and the estimated surplus or deficit as of the end of the year immediately preceding the Fiscal Year. The Board shall separately segregate and identify budget items by expense classification. The budget shall include any amounts established for reserves and may include reasonable contingency funds. The budget shall set out separately all fees or charges for recreational amenities, if any, whether owned by the Association, Declarant or others. Each Member shall be provided either with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member. A copy of a budget must be provided within ten (10) business days after receipt of a written request by the Association. The budget shall be adopted not later than thirty



(30) days prior to the beginning of each Fiscal Year. Estimated revenues shall include the proposed Common Expense Assessments. Failure of the Board to prepare, submit or adopt a budget in a timely manner or as otherwise provided herein shall not affect the validity of the budget once adopted, nor any Assessment adopted by the Board.

The Treasurer or the managing agent of the Association if so empowered, shall prepare annually and submit to the Board of Directors a proposed budget for the Association for the ensuing fiscal year. Such budget should be so prepared and submitted to the Board of Directors sixty (60) days prior to the end of each fiscal year. Each budget should, to the extent feasible, be determined by reference to the current fiscal year's actual income and expenses, together with reasonable estimates of other expenses or modifications of income and expenses expected to occur in the ensuing year, adjusted further to reflect inflation. Subject to the limitations below, each such budget shall include sums to be deposited to each reserve fund maintained by the Association. Prior to the adoption of the proposed budget, the ARC shall submit its anticipated costs of operation for the following year to the Board of Directors, which shall include the same in its proposed budget. If the ARC fails to submit its anticipated costs of operation to the Board of Directors, the Board of Directors shall include the then current year's cost of operation of the ARC in the proposed budget for the following year. The Board of Directors shall make reasonable efforts to adopt the budget for the Association for the ensuing year not later than thirty (30) days after the commencement of such fiscal year, and shall in any event so adopt such budget prior to the annual meeting of Owners. The Board of Directors shall also determine the periodic intervals of the general assessments (and Special Assessments, if applicable) to be levied to collect the income required by the budget, but not less frequently than quarter-annually.

Ratification of Budget by Owners. Within thirty (30) days after adoption by the Board of Directors of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, a copy of the budget, as adopted, or a summary thereof, to all Owners and shall set a date for a meeting, which may be the annual meeting of Owners, to consider ratification of the budget, such meeting to be not less than fourteen (14) nor more than sixty (60) days after mailing of the copy or summary of the budget. Unless at that meeting Owners having a majority of the votes of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected by the affirmative vote of Owners having a majority of the votes of all Owners, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

5.4. Regular Assessments. Upon adoption of the annual budget, the Board shall levy an annual Regular Assessment against each Lot subject to assessment in the amount required by the budget. The Board shall also determine the time and manner of payment of the Regular Assessment which shall be no more often than monthly. Written notice of the Regular Assessment shall be sent to every Owner. Each Owner shall thereafter pay the Regular Assessment to the Association at such times and in such installments as may be established by the Board and set forth in such notice. If the Regular Assessment is payable in installments, it shall not be necessary to send a notice to each Owner for each installment, a single notice being sufficient.

5.5. Special Assessments. In addition to the recurring Regular Assessment, the Association may levy such Special Assessments as are determined to be necessary or desirable



in carrying out its responsibilities and duties under this Declaration. The amount and purpose of all Special Assessments shall be established by the Board, unless otherwise provided. All Special Assessments shall be due and payable at such times and in such installments as may be determined by the Board. The Board may levy Special Assessments against all Owners and their Lots. No Special Assessment for improvements to, rather than maintenance of, the Common Property may be levied unless approved by two-thirds vote of the Owners. The Declarant shall not be liable for any Special Assessment prior to the Completion Date, unless the Declarant consents thereto in writing.

5.6. Sharing of Common Expense. Each Lot in the Subdivision shall bear an equal share of the Common Expense.

5.7. Commencement of Regular Assessments. Regular Assessments shall commence effective as of the first day of the month immediately following the month in which the Declaration is recorded in the Public Records, with respect to Lots in the Initial Property. Regular Assessments as to Lots submitted to the Declaration pursuant to Article 2 shall commence on the first day of the month following the month in which such Lot was submitted to this Declaration.

5.8. Owner Charges. Owner Charges shall be levied by the Board against a Lot and its Owner in the following circumstances: (a) to reimburse the Association for costs incurred in bringing the Owner of such Lot into compliance with the Community Documents or rules and regulations promulgated pursuant thereto, (b) if the Association provides materials or services that benefit individual Lots, but which can be accepted or not by the Owner, then the amount paid or incurred by the Association on behalf of an Owner accepting or subscribing to such material or service shall be an Owner Charge against such Owner and his Lot, and (c) to reimburse the Association for costs incurred by the Association in maintaining or operating designated property or facilities determined by Declarant to be a special benefit to a group or category of Owners and their Lots, so that certain Owners and Lots are required by this Declaration to pay costs so incurred by the Association. Each Owner covenants and agrees to pay to the Association all Owner Charges levied with respect to each Lot in which such Owner has an ownership interest. Each Owner Charge, together with Delinquency Charges with respect thereto, is the personal obligation of the Owner of a Lot at the time an Owner Charge is due, and remains the personal obligation of such Owner notwithstanding that such Owner may no longer own such Lot. An Owner is jointly and severally liable with the previous Owner for unpaid Owner Charges (and applicable Delinquency Charges) that came due prior to the transfer of title. Owner Charges shall be a charge on the land and a continuing lien upon the Lot with respect to which the Owner Charge was levied, in the same manner as provided generally for liability for, and the lien of, Assessments as set forth in Section 5.1. Likewise, the Association may record a "Lien Notice" with respect to Owner Charges in the same manner as provided for Assessments in Section 5.1.

5.9. Certificate of Payment. The Association shall, upon request, within a reasonable period of time and at a reasonable charge to be paid by the Owner, furnish to any Owner a certificate in writing signed by an officer or authorized agent setting forth whether the Assessments and Owner Charges on a specified Lot have been paid, and the date and amount, if known, of the next Assessments or installments coming due, together with the amount of any Delinquency Charges. Such certificate shall be conclusive evidence of payment of any Assessment and Owner Charge therein stated to have been paid as to third parties without notice of facts to the contrary. Such certificate shall not, however, release any person liable for an Assessment or Owner Charge, notwithstanding any error in such certificate.



5.10. Reserves. The Board may establish reserve accounts funded from Regular Assessments in reasonable amounts for such purposes and in such categories as are determined by the Board.

5.11. No Offsets. All Assessments and Owner Charges shall be payable in the amount specified and no offsets shall be permitted for any reason, including without limitation, a claim that the Association is not properly exercising its authorities and carrying out its responsibilities as provided in this Declaration.

5.12. Rights of Mortgagees. Assessments and Owner Charges against a Lot accruing prior to the recordation of a mortgage or after the acquisition of title as a result of foreclosure or conveyance in lieu of foreclosure shall be a lien against such Lot in the manner generally provided for herein. The lien of all Assessments and Owner Charges provided for herein which accrue and become due and payable with respect to any Lot after a first mortgage is recorded with respect thereto, but prior to the transfer or conveyance of title as a result of a foreclosure or a conveyance in lieu of such foreclosure, shall be subordinate to the lien of such first mortgage, except for any such Assessments or Owner Charges that are secured by a Lien Notice recorded in the Public Records prior to the recordation of such first mortgage. As to mortgages other than first mortgages of record, the lien of the Association for Assessments and Owner Charges is superior to the lien of such mortgage.

5.13. Delinquency Charges. All Assessments, Owner Charges and other amounts due the Association pursuant to this Declaration that are not paid within 15 days of the due date shall thereafter bear interest at the highest rate permitted by law then in effect, or such lower rate as the Board may from time to time determine. Further, if any Assessment or Owner Charge is not paid within 15 days of its due date, then a late charge shall be levied. The initial late charge shall be \$50.00. The Board may from time to time increase the amount of the late charge authorized hereby, taking into consideration such factors as the Board deems applicable in its discretion including, by way of illustration and not limitation, changes in economic indexes such as the consumer price index, the costs reasonably expected to be incurred by the Association as a result of following up such delinquency, and the effectiveness of such late charge in assuring prompt and timely payment of Assessments and Owner Charges. The liens in favor of the Association shall secure the amount of the Assessment or Owner Charge, as applicable, all interest accruing thereon, late charges and all costs incident to the collection thereof including a reasonable attorney's fee, whether enforced by suit or otherwise and, if by suit, whether at trial or any appellate level, and including fees for paralegals. The Association shall be entitled to recover such interest, late charges, costs and fees from any Owner personally liable for the Assessment or Owner Charge as to which they apply.

5.14. Remedies of Association Upon Non-Payment. If any Assessment, Owner Charge, or installment thereof, is not paid within 15 days after the due date specified by the Board, then such Assessment or Owner Charge (including the full amount of any such Assessment or Owner Charge accelerated by the Board in accordance with the Bylaws) shall be delinquent and shall, together with Delinquency Charges with respect thereto, be a continuing lien on the Lot against which such Assessment or Owner Charge was levied, binding the Owner thereof, his heirs, personal representatives, tenants, successors and assigns. Prior to bringing an action for foreclosure of a lien, the Association shall record a Lien Notice among the Public Records, unless in the opinion of the Board recording such notice is contrary to or prohibited by



any then existing court order, statute or rule. A copy of such Lien Notice, whether recorded or not, shall be sent to the then Owner by United States mail, either certified or registered, return receipt requested at the Owner's address on the Association's records. Failure of the Association to obtain a receipt shall not prevent enforcement of a lien. If such Assessments or Owner Charges, together with Delinquency Charges with respect thereto, are not paid in full within thirty (30) days after the date such Lien Notice is deposited in the United States mails, then thereafter the Association may institute suit to foreclose its lien. The recorded Lien Notice shall secure not only the Assessments, Owner Charges and Delinquency Charges reflected therein, but all unpaid Assessments and Owner Charges, and Delinquency Charges with respect to all such amounts, which may accrue subsequent to the recordation of such Lien Notice and prior to the entry of a final judgment of foreclosure. The Association may at any time bring an action at law with respect to any Assessments or Owner Charges and Delinquency Charges then due and payable but which have not been paid. Upon the timely payment or other satisfaction of all amounts specified in a Lien Notice and all other Assessments, Owner Charges and amounts which have become due and payable with respect to such Lot as to which such Lien Notice was recorded, together with Delinquency Charges as may be applicable, the Association shall furnish a release of such Lien Notice in recordable form, but shall not be responsible for the cost of recording.

5.15. Declarant Assessment. Declarant is obligated to pay the Deficiency. Notwithstanding any provision of this Declaration, the Articles or Bylaws to the contrary, Declarant shall not be obligated for, nor subject to, any Assessment or other charges for any Lot that it may own, for the period of time beginning on the date such Lot becomes subject to Assessments, and ending when the Declarant's obligation to fund the Deficiency is withdrawn or deemed withdrawn hereunder. Declarant's obligation to pay the Deficiency may be withdrawn by Declarant at any time, and if not sooner withdrawn, shall be deemed withdrawn on the Completion Date. In no event shall Declarant be liable for any Owner Charge with respect to any Lot it owns prior to the Completion Date, except with respect to any materials or services which Declarant agrees in writing to secure through the Association.

5.16. Application of Payments. Any payment received by the Association with respect to Assessments or Owner Charges due shall be applied first to any interest accrued, then to any Late Charge, then to any costs and reasonable attorney's fees incurred in the collection, and then to the delinquent Assessment or Owner Charge. Such application shall apply notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. If there are both delinquent Assessments and delinquent Owner Charges due with respect to any Owner, Lot, the Board shall have the option of applying payments on account either with respect to Assessments or to Owner Charges in its discretion. Until payment therefore is received by the Association, any amounts expended by the Association for which an Owner Charge is or may be levied shall be deemed a Common Expense.

5.17. Capital Contribution. At the time legal title to a Lot is first conveyed by Declarant to an Owner, the Capital Contribution shall be payable to the Association by such Owner. Capital Contributions may be expended for regular Common Expenses, added to reserves, or set aside for improvements, contingency for other purposes, as may be determined by the Board.



**ARTICLE 6
DUTIES AND POWERS OF ASSOCIATION**

6.1. General Duties and Powers. In addition to the duties and powers enumerated herein and under the Articles and Bylaws, and without limiting the generality thereof, the Association shall:

- (a) levy and enforce Assessments and Owner Charges and otherwise enforce this Declaration, the Articles, Bylaws and rules and regulations adopted pursuant thereto by appropriate means and carry out the duties and authority of the Association hereunder;
- (b) contract for and maintain such policy or policies of insurance as may be required hereunder or as the Board deems necessary or desirable;
- (c) have the power of entry upon any Lot as reasonably necessary in connection with the carrying out of Association responsibilities hereunder;
- (d) have the power to negotiate and contract for such materials and services for the benefit of Owners who subscribe to or elect to accept such materials or services, with payment for same to be (i) separately billed to the Owners or (ii) advanced by the Association with the cost thereof assessed against the Owner(s) who subscribe to or accept such materials or services as a Owner Charge;
- (e) maintain, own, regulate and otherwise manage and operate the Common Property;
- (f) have the power and authority to grant easements with respect to the Common Property, or to transfer Common Property or any interest therein to any public authority or utility in connection with exercise of the right of eminent domain, or to transfer maintenance responsibilities to governmental authorities as contemplated hereby, all without the consent or joinder of any Member.
- (g) have the authority, duty and responsibility for the operation and maintenance of the Surface Water Management System Facilities.
- (h) have the authority to acquire or accept land, interests in land, and personal property as Common Property, and to maintain, repair, improve, replace, operate and manage any such property as required by this Declaration or as determined by the Board in a manner not inconsistent with this Declaration.
- (i) have the authority to maintain, or supplement the maintenance of, any landscaping, irrigation or other improvements, within or adjacent to any public street or road within, adjacent to, or providing direct access to the Subdivision, or the improvements to such street or road, to the extent that same is not maintained by public authorities at an acceptable level, as determined by the Board.
- (j) have the power and authority to borrow funds to carry out any Association duty or responsibility, and to give security for any such borrowing, including but not limited to, granting a security interest in, or lien upon, Assessments, Owner Charges, and other



funds receivable by the Association, together with any liens or lien rights associated therewith, all on terms approved by the Board. All payments of principal, interest, and other financing costs shall be a Common Expense.

(k) have the power and authority to purchase Lots and other property, real and personal, and to acquire and hold, lease, mortgage and convey them, including but not necessarily limited to, the right to acquire Lots at any foreclosure sale, or to accept a deed in lieu of foreclosure. The power to acquire, hold, convey, lease and mortgage property shall be exercised by the Board.

(l) have the power and authority to carry out such maintenance within public rights of way or elsewhere, pursuant to maintenance agreements with the County or the District.

(m) have the power and authority to maintain, operate, and pay electricity charges with respect to, any street lighting within the Subdivision installed by Declarant, or subsequently installed by the Association.

(n) have the power and authority to interpret and construe the provisions of the Declaration and the Bylaws in circumstances in which there is an apparent inconsistency, or such provisions fail to provide clear guidance with respect to specific matters.

6.2. Implied Powers of the Association. The Association shall have all the power and authority reasonably necessary for it to carry out its duties and rights set forth in this Declaration, the Articles or Bylaws, including any right or power reasonably to be inferred from the existence of any other right, power, duty or obligation given to it or reasonably necessary to effectuate its duties hereunder.

6.3. Indemnification by Association. The Association shall indemnify and hold harmless each Owner with respect to all claims, demands, damages and causes of action against such Owner, but only with respect to the following circumstances:

(a) Any claim of personal injury or property damage arising out of the carrying out by the Association of its right or duty to maintain, repair or replace any improvements, installations or facilities within any easement in favor of the Association located upon such Lot.

(b) Any lien or claim for payment for services, materials or both with respect to the carrying out of such right or duty of maintenance, repair or replacement by the Association with respect to any such easement in favor of the Association located within such Lot.

(c) Any other claims for personal injury or property damage arising out the Association carrying out any right or duty pursuant to the Declaration upon or within the Lot of such Owner.

The indemnification provided for herein shall not extend to nor include claims against an Owner based upon the negligence or willful conduct of such Owner or those for whom he is responsible hereunder. Such indemnification shall, however, include the reasonable costs incurred by such Owner in defending any claim to which indemnification is applicable pursuant hereto.



6.4. Proceedings. The Association, acting through the Board, shall have the power and duty reasonably to defend the Association (and, in connection therewith to raise counterclaims) in any Proceedings. The Association, acting through the Board, shall have the power, but not the duty, reasonably to institute, prosecute, maintain, and/or intervene in a Proceeding, in its own name, but only with respect to matters affecting or pertaining to this Declaration, the Articles, Bylaws, rules and regulations, the Common Property, and such other matters as may be expressly provided by applicable law, and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with this Section 6.4, as follows:

(a) Operational Proceeding. The Board from time to time may cause an Operational Proceeding reasonably to be commenced and prosecuted, without the need for authorization from the Owners.

(b) Non-operational Controversies. To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent, and to protect the Board and individual Directors from charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority, or in a manner not in the best interests of the Association and the Owners, and to assure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with the following provisions of this Section 6.4 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Association.

The Board first shall endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse parties. In the event that such good faith negotiations fail reasonably to resolve a Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by non-binding arbitration or non-binding mediation. In the event that such arbitration or mediation does not reasonably resolve the Non-Operational Controversy, or if mediation is appropriate and the adverse party refuses mediation, then the Board shall not be authorized to commence, institute or maintain any Proceeding with respect to such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and the expense of prosecuting the Non-Operational Controversy, by obtaining an opinion letter from a Colorado licensed attorney, expressly stating that such attorney has reviewed the underlying facts, data and law in sufficient, verifiable detail to render the opinion, and expressly opining whether or not the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaims which may be asserted against the Association. The opinion letter shall also contain the attorney's best, good faith estimate of the estimated litigation costs. Said opinion letter shall also include the attorney's best, good faith estimate of the period of time reasonably expected to prosecute such Non-Operational Controversy to completion, including any appeal, assuming same does not settle. Such opinion, which may be a "reasoned opinion," shall fairly disclose the attorney's good faith opinion of the merits of the Association's position and defenses with respect thereto, the range of outcomes that might reasonably be



anticipated, and the degree of certainty or uncertainty thereof. Said opinion letter shall be accompanied by, or contain an adequate summary of, any investigations, reports, analysis, or other data upon which such opinion is predicated. The opinion letter shall likewise address any issue with respect to potential collectability of any judgment that may ultimately be obtained.

- (2) The Board shall also obtain the written opinion of three (3) licensed real estate brokers who individually, or through their respective firms, have for at least five years preceding such opinion, engaged in the listing and/or sale of single-family homes and residential units in Routt County, Colorado, which represent a significant portion of the total sales in which such broker or brokerage firm have participated during such time. Each such opinion letter shall contain the good faith opinion of such broker as to the effect, if any, that the prosecution of such Non-Operational Controversy, and the imposition of Assessments for fees and costs associated therewith, will have on the marketability and/or market value of the Lots within the Subdivision.
- (3) Upon receipt and review of the opinion letter and the brokers' letters, if two-thirds or more of the entire Board affirmatively vote to proceed with the institution of prosecution of, and/or intervention in, the Non-Operational Controversy, the Board shall thereupon duly call and notice a special meeting of the Members. The notice of the meeting shall include a copy of the opinion letter and all of the broker letters, together with a written plan by the Board as to how the Association will fund the fees and costs of such litigation, including the estimated litigation costs. At such special meeting, following review of the opinion letter, broker letters and the Board's plan for funding, and a full and open discussion thereof, which shall include balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, or taking other action, there shall be a vote of the Owners. If Owners holding seventy-five (75%) percent or more of the total Voting Interests affirmatively vote in favor of pursuing such Non-Operational Controversy, then the Board shall be authorized to proceed to institute, prosecute and/or intervene in the Non-Operational Controversy. If, however, Owners of fewer than seventy-five (75%) percent of the total Voting Interests affirmatively vote in favor of pursuing such Non-Operational Controversy, then the Non-Operational Controversy shall not be pursued further.
- (4) In the event of any bona fide settlement offer from the adverse party or parties in a Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association has a substantial likelihood of prevailing on the merits without prospect of material liability on a counterclaim, then the Board shall have the authority to accept such settlement offer without consent of the Owners. If the Board is so authorized to accept such a settlement offer, but declines to do so, and in all other cases of a settlement offer, the Board shall submit the settlement offer to the Owners, who shall have the right to accept any such settlement offer upon vote of the Owners holding a majority of the total votes of the Association.

The opinion letter, estimated litigation costs, broker letters, Board plan for funding, and all discussions and other materials related to the consideration of the Non-operational Controversy and presented at the meeting of Members held pursuant to Subsection 6.4(b)(i)(3) above, shall be confidential and privileged. No such information shall be disclosed by any Member to anyone who is not a Member, other than to the Association's attorneys or to an attorney representing such Member individually. Copies of any materials provided to Members of such meeting shall, unless otherwise determined by the Board, be required to be returned to the Board by the Member prior to departing from the meeting. Such meeting shall be open only to Members and Association and Owner attorneys, and may not be recorded. For the purpose of such meeting, the Members in attendance shall be deemed to be a legal committee of the Association, meeting with respect to prospective or pending litigation.

(c) Funding Restrictions. In no event shall any reserves of the Association be used as a source of funds to institute, prosecute, maintain and/or intervene in any Proceeding.

(d) Certain Proceedings Prohibited. Anything contained in the Community Documents or elsewhere to the contrary notwithstanding, the Association may not institute, maintain, settle or appeal a Proceeding in its name on behalf of Owners concerning matters of common interest to such Owners, except as may be expressly authorized by law, nor shall the Association have any authority to maintain a Proceeding that is a class action as a representative of, or on behalf of, its Members. This Subsection 6.4(d) may not be amended by the Owners until more than ten (10) years after the Completion Date.

(e) Amendment. Any provision contained in the Community Documents, to the contrary notwithstanding, (i) other than as set forth in this Section 6.4, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution or maintenance of or the intervention in, a Proceeding by the Board without first strictly complying with, and continuing to comply with, each of the provisions of this Section 6.4 shall be unauthorized and *ultra vires* to the Association, and (iii) this Section 6.4 may not be amended or deleted at any time during the ten (10) years immediately following the Turnover Date without the express prior written approval of the Owners holding at least eighty-five (85%) percent of the total Voting Interests, and any purported amendment or deletion of this Section 6.4 or any portion hereof during such ten year period or without the express prior written approval of Owners holding at least eighty-five (85%) percent of the total Voting Interests in the Subdivision shall be void.

6.5. Transfer of Maintenance to Governmental Authority. The Board may transfer any maintenance responsibility for any part of the Common Property, or any other item or items for which the Association has maintenance responsibilities, to any special tax district, taxing unit, community development district, other public agency, authority or entity organized or having jurisdiction of such matters without the necessity of Owner approval, provided that such governmental authority accepts such maintenance responsibility and such transfer is not inconsistent with the Governmental Approvals, as they may be amended. If transfer of such responsibility is effected, the Association shall retain the authority to supplement such maintenance to the extent such public authority does not maintain such items to an acceptable level, as determined by the Board.



**ARTICLE 7
INSURANCE AND RECONSTRUCTION**

7.1. Insurance by Association. The Association shall obtain and continue in effect such insurance in such amounts and coverages as the Board shall from time to time determine to be appropriate, necessary or desirable. All costs associated with such insurance shall be a Common Expense.

7.2. Owner's Insurance. Each Owner shall be responsible for obtaining and maintaining in effect all such casualty, liability and other insurance with respect to such Owner and such Owner's Lot and Home as the Owner may from time to time determine. The Association shall not obtain any such insurance on behalf of an Owner, nor shall the Association insure the Lots, or Improvements thereto in any manner. ***Each Owner must insure his own Home and personal property located therein, and maintain his own liability and any other insurance desired by him.***

7.3. Destruction of Improvements.

(a) Owner's Duty to Reconstruct. In the event any Permitted Improvement upon a Lot shall be substantially damaged or destroyed, it is the obligation of the Owner of such Lot to repair, rebuild, or reconstruct the Permitted Improvements as soon after such casualty as may be practical. All such repair, replacement and reconstruction shall require Architectural Review.

(b) No Abatement of Assessments. Notwithstanding damage to, or destruction of, the Permitted Improvements to a Lot, the Owner of the Lot shall remain liable to the Association for all Assessments and Owner Charges levied with respect to such Lot. Such liability shall continue unabated, even though such Lot is not fit for occupancy or habitation, and even though such Improvements are not reconstructed.

(c) Removal of Debris. As soon as practical after damage or destruction, the Owner shall cause to be removed all debris and portions of the Improvements that cannot be preserved for incorporation into the replacement structure. All dangerous conditions shall be removed and addressed immediately. All debris shall be removed from the Lot no later than thirty (30) days after the date upon which the casualty occurs.

(d) Procedural Provisions. The Owner of a Lot whose Home has been damaged or destroyed shall, within thirty (30) days of the date of the casualty, notify the Association in writing of his or her intention to rebuild or reconstruct. Failure so to notify shall be deemed evidence of such Owner's intention not to rebuild. If the Owner provides such notification, he or she shall initiate Architectural Review within ninety (90) days of such notification, and shall commence rebuilding or reconstruction within sixty (60) days after final approval by the ARC, and prosecute same to completion in a diligent manner. If for any reason the Owner does not notify, initiate an Architectural Review, commence or diligently pursue rebuilding or reconstruction within the time limits established herein, then such Owner shall be deemed to have elected not to rebuild, and the Association shall have the rights and duties hereinafter specified. An Owner may notify the Association in writing of an election to rebuild or not to rebuild at any time.



(e) Requirements Upon Failure to Reconstruct. If the damaged or destroyed Improvement is a Home, and if an Owner elects not to rebuild the Home, or is deemed to have so elected hereunder, then such Owner shall be obligated, at such Owner's expense, to remove all portions of the Improvements remaining, except underground utility lines, which shall be secured. The Owner shall cause to be removed all parts of the Improvements then remaining, including the slab and foundation. The Owner shall provide fill and install sod so that the Unit shall thereupon give the appearance of the landscaped open space. Such clearing and restoration of the Lot shall be completed not later than thirty (30) days after the date upon which the Owner elects or is deemed to have elected not to rebuild.

(f) Failure to Comply. If an Owner fails to comply in a timely manner within any provisions of this section, then the Association shall have the right to do so on behalf of such Owner pursuant to Section 8.12, and the cost thereof shall be levied against such Owner and such Owner's Lot as an Owner Charge.

(g) Extension of Time. Upon written application of an Owner, any of the time periods set forth in this section may be extended by the Board for good cause.

**ARTICLE 8
 USE RESTRICTIONS**

The following restrictions, conditions and agreements are hereby imposed upon the Subdivision and shall apply to all Owners and their tenants and their respective guests, families, invitees, agents, employees, contractors, licensees and all other persons occupying or using such Lots in actual or constructive possession or control thereof.

8.1. Residential Use. Each Lot shall be used for single family residential purposes only, in accordance with applicable zoning and governmental land use regulations, Governmental Approvals and this Declaration. No Home shall be Occupied by more than one Family, its domestic employees, and Guests. The restrictions of this subsection shall not, however, be deemed to prohibit an Owner from maintaining a personal or professional library, from keeping personal, business, or professional records in his or her Home, or from handling personal, business, or professional telephone calls, corresponding, both written and by electronic transmission, or conducting internet or other telecommunication activities associated with such Owner's business or profession. Such uses are expressly declared customarily incident to residential use. This subsection does, however, prohibit such commercial or business activity upon a Lot, or from the Home located thereon, which would disrupt the residential ambiance of the Subdivision, or have associated with it such conduct and activity normally associated with a business or professional use. That prohibited conduct and activity includes, but is not necessarily limited to, regular or frequent traffic to and from the Lot by persons making deliveries or pickups, by employees, other business associates, customers, or clients. This provision is intended to permit the conduct of such business and professional activities from a home office as are not uncommon in residential areas, and are consistent with primary Single Family residential use, which use does not have a material effect upon the number or frequency of visitors to the Lot, create substantially more demand for parking, increase the traffic within the Subdivision, or result in a material change in the use of the Lot.



8.2. Vehicles. The following provisions shall govern the parking of vehicles within the Subdivision.

(a) Passenger vehicles, including cars, station wagons, passenger vans, passenger minivans, sport utility vehicles and pickup trucks providing primary transportation for one or more Occupants of a Lot, commercial vehicles not prohibited by subsection 8.2(c) below, and other vehicles primarily intended and used to provide transportation for passengers, may be parked and kept upon a Lot only if parked within the garage or on the driveway of such Lot.

(b) Parking of trailers, Prohibited Vehicles, mobile homes, recreational vehicles, camper, motor homes, motorcycles, trucks, golf carts, boats and any other watercraft, trailers, stored vehicles or inoperable vehicles anywhere within the Subdivision other than in enclosed garages is prohibited; provided, however that construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or Common Property, and recreational vehicles and boats may be parked in driveways for not more than twenty four (24) hours while loading and unloading, which shall not occur more than twice per month.

(c) Parking of any vehicle belonging to any Occupant is prohibited on any public street or thoroughfares within the Subdivision and on any part of a Lot other than the enclosed garage or paved driveway. Vehicles belonging to Guests may park upon a public street, in accordance with Governmental Approvals, if the driveway of the Home such Guest is visiting is full; provided, however, that no such vehicle may be parked on a public street for longer than twelve (12) consecutive hours, nor more than twelve (12) cumulative hours in any eighteen (18) hour period. The vehicles may also be parked in any Common Property parking area so designated. There shall be no parking of any vehicle on any street if parking is prohibited thereon by ordinance or rule of the County.

(d) Recognizing that classification and use of vehicles evolves over time, and that on occasion it may be difficult to determine if a specific vehicle or vehicle type is permitted, restricted or prohibited by this Section, it is the intent of this Section that standard size vehicles, the purpose and use of which is for personal transportation, are permitted under Subsection (a), notwithstanding that the vehicle may also be used for transportation of passengers carrying out commercial enterprises. Prohibited Vehicles are those which by, nature, or appearance are clearly oversized commercial vehicles, the parking of which within the Subdivision would tend to degrade the appearance and values of the Subdivision. The Board shall have the authority from time to time to adopt and amend standards of interpretation of this Section, providing in more detail for the delineation of different vehicles and different vehicle types, and the Board may further determine whether a specific vehicle is a Prohibited Vehicle. In making such decisions, the Board may take into consideration the general condition and appearance of the vehicle in question. All such determinations and standards adopted by the Board shall be conclusive for all purposes hereunder.

8.3. Time Shares. Use of any Lot or Home thereon for operation of a timesharing, fraction-sharing or similar program whereby the right of use rotates among participants in the program on a fixed or floating time schedule over a period of years is prohibited.



8.4. Animals. The raising, breeding or keeping of any animals, other than a reasonable number of domestic cats, dogs and other usual and common domestic household pets, is prohibited throughout the Subdivision. The Board may adopt rules and regulations prescribing what animals are deemed to be common domestic household pets. No animals shall be kept within the Subdivision for any commercial purpose, or in such a manner as to cause noxious odors to escape to nearby Lots. The Association may require the removal of any pet that is allowed to roam free or, in the sole discretion of the Association, endangers the health or safety of or constitutes a nuisance or inconvenience to the occupants of the Subdivision. In particular the Association may require the removal of any pet that makes any objectionable noise or any dog whose barking creates an unreasonable disturbance or annoyance to any occupant of the Subdivision in a sustained, recurring or persistent manner. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Association whenever outside a dwelling. Pets shall be registered, licensed and inoculated as required by law. Owners must keep their Lot reasonably clear of animal excrement. Owners must pick up after their dogs or animals.

8.5. Trash. Weeds, trash, rubbish, garbage, debris, animal excrement, and other unsightly material shall not be allowed to accumulate on any Lot and shall promptly and regularly be removed therefrom. All garbage, trash, refuse and rubbish shall be deposited and kept in enclosed bear-proof trash containers appropriate to their contents and such containers may be regulated as to type and size by the Association or the ARC or the County. All trash containers must be bear-proof in accordance with standards set by the Colorado Division of Wildlife and/or Routt County. Such containers shall be maintained in a clean and sanitary condition and shall, except for days of pickup, be kept inside the dwelling or visually screened from the streets and neighboring properties by landscaping or opaque walls made a part of the dwelling on the Lot. Outside burning of any trash, leaves, debris or other materials is prohibited except by Declarant and contractors engaged in constructing Improvements in the Subdivision. On-site storage of gasoline, heating, or other fuels is prohibited, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers, snow blowers and similar tools or equipment and except that the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

8.6. Nuisances. No noxious or offensive activity shall be carried out on any Lot, nor shall anything be done or placed thereon that is or may become a nuisance, or cause unreasonable disturbance or annoyance to any occupant of the Subdivision, or cause unreasonable interference with the peaceful enjoyment of any Lot. Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed Improvements is prohibited.

8.7. Temporary Structures and Mobile Homes. No structure of a temporary nature and no mobile home may be kept within the Subdivision except by Declarant or its designees and used in connection with the development, construction, sale and marketing of the Subdivision.

8.8. Signs. No sign shall be permitted upon any Lot within the Subdivision, other than the following:

- (a) Any signage containing identification of a vacant Lot or the names of the Occupants, street address or both as to an improved Lot, and such signage shall be as



specified, allowed or approved by the ARC and as required by any governmental authority having jurisdiction thereof.

(b) One sign announcing that the Lot is "For Sale," including usual or customary information provided in such signs, provided that (i) such sign (including all component parts thereof other than supports) shall not exceed five (5) square feet in area, (ii) the sign will be composed of tasteful colors and design that are complimentary rather than disruptive to the visual ambiance of the Subdivision, and (iii) such sign shall be located at least fifteen (15) feet from, and be positioned parallel to, the front lot line. All such signs must be approved by the ARC prior to installation as to color, content, and location. The ARC may, from time to time, adopt standards with respect to such matters, and in such event such signs that comply with the said standards may be installed without further ARC approval. In adopting such standards, the ARC may, in its discretion, establish different requirements for signs furnished by licensed real estate brokers, compared to signs furnished by Owners or others. Such distinction may take cognizance of the fact that licensed brokers often have an inventory of signs employing colors and/or designs identified with such broker.

(c) During the period of construction activity only, one sign announcing the name of the contractor, not to exceed a total area (exclusive of supports) of ten (10) square feet. Such sign shall be removed promptly upon completion of construction activity, and in all events, within ten (10) days thereof.

(d) Political signs of reasonable size and numbers, espousing candidates or issues on local ballots during the period of campaigning, all such signs to be removed within seven (7) days of the final election with respect to such candidate or issue. An American flag may be displayed in a reasonable and discrete manner.

(e) Signage, banners and advertisements placed by Declarant or Declarant's designees relating to the development of the Subdivision and the sale and marketing of Lots and Improvements in the Subdivision.

The Architectural Review Committee may, in its discretion, grant approval for additional temporary signs and displays not contemplated hereby, including signs for model Homes. In calculating sign area, only one side of the sign shall be considered.

8.9. Commercial Activities Prohibited. The Subdivision is a residential community, and no commercial structures or activities, including but not limited to outdoor storage of any kind and warehousing of any kind, are permitted within the Subdivision, except for those commercial structures and activities by Declarant and its designees in connection with the development, construction, marketing and sale of the Subdivision and Homes.

8.10. Miscellaneous Visual Restrictions. No clothes lines or clothes poles shall be erected, and no outside clothes drying is permitted. Structures, equipment and other items on the exterior portions of a Lot and the Improvements thereon that have become rusty, dilapidated or have otherwise fallen into disrepair are prohibited. The personal property of Occupants shall be kept inside the Home, or within a fenced or walled-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in a neat and orderly condition. Any construction, erection or placement of any thing, permanently or



temporarily, on the outside portions of a Lot, whether such portion is improved or unimproved, shall be prohibited except as expressly allowed by and in strict compliance with the provisions of this Declaration. This shall include, by way of illustration and not limitation, signs, basketball hoops and goals, swing sets and similar sports and play equipment, clotheslines, garbage cans or containers, woodpiles, above-ground swimming pools, hot tubs, hedges, walls, dog runs, animal pens and fences of any kind. No Lot may be completely cleared of vegetation.

8.11. Maintenance of Lots and Improvements. Each Owner shall maintain such Owner's Lot, the Home and other Improvements located thereon, and the area within any street adjacent to the Lot between the Lot line and the improved street, in a good condition and state of repair and in accordance with this Declaration. An Owner's liability for maintenance shall also include the sidewalk and driveway (and snow removal there from), lawn watering and irrigation systems and landscaping, whether it be upon the Owner's Lot or within such unimproved street adjacent to such Lot, except to the extent the Association has maintenance responsibility hereunder. When, and if, lawn watering restrictions are suggested, required or imposed on the Property, and any parts thereof, such restrictions shall be complied with by all Owners and the Association as soon as possible.

8.12. Right of Association to Maintain. If an Owner fails to maintain such Owner's Lot and Improvements as required by this Declaration, or to comply with Section 7.3, then after notice as herein provided, the Association may perform the Required Actions. All costs of such Required Actions shall be assessed to the particular Owner(s) and his or their Lot(s) as an Owner Charge. Until so collected, such costs shall be treated as a Common Expense. In proceeding under this Section, the Association shall employ the procedures hereinafter set forth:

- (a) Upon finding by the Board of a deficiency in the carrying out of any Required Actions, the Board shall provide notice thereof in writing to the responsible Owner, briefly describing the deficiency and setting forth the action needed to correct the deficiency.
- (b) If the Owner does not correct such deficiency within the earlier of twenty-five (25) days after mailing such notice, or twenty (20) days after receipt of such notice, then thereafter the Board may give notice to the Owner of the Board's intention that the Association shall perform such Required Actions.
- (c) Thereafter, the Association may effect such Required Actions.
- (d) All such Required Actions by the Association shall take place only during daylight hours on weekdays, excluding holidays.

8.13. Reconfiguration of Lots. No Owner may subdivide a Lot nor convey or create any other possessory interest in less than the entire Lot, except an Owner may grant easements on less than all of a Lot. Notwithstanding the foregoing, an Owner of a Lot, may, with the written consent of the Association, to be granted by a majority vote of the entire Board, convey land from one side of such Owner's Lot to the Owner of the adjacent Lot, so long as such conveyance will not result in the violation of any setback requirement or be inconsistent with the Governmental Approvals. Any Lot, as reflected on the Plat, which is reduced or enhanced in accordance herewith, shall thereafter, as so reconfigured, be deemed the Lot.



8.14. Restrictions on Common Property. The Common Property shall not be used by motorized vehicles, such as but not necessarily limited to automobiles, trucks, tractors, motorcycles, golf carts, snow mobiles, all terrain vehicles or motor scooters; provided, however, that this provision shall not apply (a) to emergency vehicles carrying out official duties or to vehicles reasonably necessary for carrying out construction or maintenance thereof, or (b) to driving within the portions of streets improved for such purpose. The Board may, in the exercise of its discretion, authorize limited vehicular use of specific areas within the Common Property that are deemed to be consistent with the purposes of the Common Property, on such terms and conditions as the Board may determine.

8.15. Recreation Area Restrictions. The Recreation Area shall be used only for recreational purposes described in the PUD Plan consistent with its features, facilities and improvements, and shall be primarily for the Subdivision Occupants. The use of the Recreation Areas shall be subject to all reasonable rules and regulations promulgated by the Board with respect thereto. The Board may authorize Occupants to reserve the Recreation Areas, or parts thereof, for picnics, reunions and other functions and activities for Occupants and their Guests, and may allow and provide for the occasional use of the Recreation Area for functions or activities by persons or organizations other than Subdivision Occupants, provided such use is consistent with the purpose of the Recreation Area, all on such terms and conditions as the Board may require, which terms may or may not include the payment of a fee or security deposit.

8.16. Common Areas. Unless permitted by the Code and the PUD Plan, the following acts and activities are expressly prohibited within the boundaries of all Common Areas without the prior consent of the Association:

- (a) Construction or placing of buildings, roads, signs, billboards or other advertising or other structures on or above the ground.
- (b) Construction or placing of utilities on, below or above the ground without appropriate local, state and federal permits or other authorization.
- (c) Dumping or placing of soil or other substances or material as landfill or dumping or placing trash, waste, unsightly or offensive materials.
- (d) Removal, mowing or trimming of trees, shrubs or other vegetation.
- (e) Application of herbicides, pesticides, or fertilizers.
- (f) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substances in such manner as to affect the surface.
- (g) Surface use except for purposes that permit the land or water areas to remain in its natural condition.
- (h) Any activity detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.
- (i) Acts or uses detrimental to such retention of land or water areas.

**ARTICLE 9
ARCHITECTURAL REVIEW**

9.1. Architectural Review. Following construction and installation of the Original Improvements on each Lot, no additional Improvements, or alteration or modification of any then existing Improvements, shall be constructed, reconstructed, altered, or installed until the design, materials and location thereof has first been approved in writing by the Architectural Review Committee.

9.2. Application. Requests for ARC approval of proposed Improvements shall be in writing, shall be on such application form or forms as may be promulgated from time to time by the ARC, and shall be accompanied by such plans, specifications, site plans, drawings, samples and other materials as may be reasonably required by the ARC in order to evaluate the proposal. The ARC may waive formalities in the approval process. The ARC shall review and evaluate all applications within thirty (30) days after receipt of all such materials required by the ARC, and either approve, disapprove or approve in part and disapprove in part.

9.3. Conditional Approval. The ARC may issue a conditional approval of proposed Improvements, specifying that the proposed Improvements will be approved, provided the Owner agrees to specified conditions. Such conditions may include, but shall not be limited to, locating the proposed Improvements at a different location within the Lot, altering colors, materials or other features of the proposed Improvement, shielding or screening proposed Improvements with landscaping, fences, walls or other materials, modifying exterior design, or such other conditions as will, in the judgment of the ARC, make the proposed Improvements consistent with this Declaration, or that will minimize or eliminate any undesirable feature of the proposed Improvement.

9.4. Time Limitations. If Improvements are made without ARC approval, and the ARC or the Board does not issue written disapproval thereof for a period of ninety (90) days after completion of such Improvements, then such Improvements shall be deemed approved. Provided, however, that a failure of the ARC or Board to object in a timely fashion shall not be deemed a waiver by the Association of the right to require the removal of any Improvement that is expressly prohibited by this Declaration.

9.5. Compliance with Standards. All Improvements shall comply with the mandatory provisions of Section 9.11 of this Declaration. The Standards adopted by the ARC shall be deemed to include any mandatory or prohibitory provisions of this Declaration, including Section 9.11 hereof. Standards shall otherwise set forth matters subject to ARC review that are mandated, prohibited or approved, thereby establishing criteria that will assist Owners and provide criteria for the ARC in its review and action upon an application. It is anticipated that the Standards may be adopted for major elements under ARC consideration, as well as lesser items of a recurring nature. The fact that the ARC has not included a particular aspect of a proposed Improvement within the Standards shall not preclude the ARC from taking that aspect into consideration in its review and approval or disapproval of it. Proposed Improvements which are in full compliance with elements of the Standards that are comprehensive with respect to such proposal may be constructed or installed without necessity of formal ARC review and approval, but only if the Standards so provide.



9.6. Review Criteria. The Architectural Review Committee shall have broad discretion to approve or disapprove proposed Improvements, including the discretion to approve or disapprove on the basis of aesthetics. The Standards are intended to be a guide to the ARC, and even though an application may comply with all applicable provisions of the Standards, the ARC is not obligated to approve if there are other features of the application of which the ARC does not approve. The ARC may approve of an application which does not comply in all respects with all applicable provisions of the Standards if the ARC, in its sole judgment, determines that the proposed Improvements in their entirety merit approval, and any deviation from the Standards will not substantially, materially and adversely affect the Owners and Occupants of the Subdivision. However, all improvements shall conform to the design standards of the approved PUD Plan.

9.7. Appeal. Unless the Board is acting as the Architectural Review Committee, any Owner aggrieved by decision of the Architectural Review Committee may appeal same to the Board, which shall hold a hearing within thirty (30) days, and either approve, disapprove or modify the decision of the Architectural Review Committee.

9.8. Procedural Matters. The ARC may adopt reasonable rules and regulations for the conduct of its authority, and the Board may establish, and modify from time to time, a reasonable schedule of fees for review by the ARC. The ARC, with approval of the Board, may engage the services of architects, landscape architects, engineers or other design professionals, to advise the ARC in carrying out its functions. In such event, costs associated therewith may be taken into consideration in the establishment of any fee schedule. The Association shall maintain records of all ARC proceedings, and shall furnish a certificate in recordable form upon the request of any Owner verifying the compliance or noncompliance of such Owner and Owner's Lot with the Architectural Review provisions of this Declaration.

9.9. Architectural Review Committee. Prior to the Completion Date, unless Declarant shall otherwise specify in writing, the Declarant shall act as the ARC or may appoint the ARC, and may approve applications or take other actions on behalf of the ARC in Declarant's own name or in the name of the ARC. After the Completion Date, or upon an earlier determination by Declarant, the ARC shall be composed of at least three (3) individuals appointed by the Board, each of whom shall be an Owner or an architect or other licensed design professional. The ARC shall act by simple majority vote. In the event of the death, resignation or removal of any member of the ARC appointed by the Board, the Board shall appoint a successor. No member of the ARC shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of services performed pursuant to this Declaration; provided, however, any non-Owner and any licensed design professional serving on the ARC may be entitled to reasonable compensation, the cost of which may be taken into consideration in establishing fees for Architectural Review. Members of the Architectural Review Committee shall serve terms established by the Board, and may be removed, with or without cause, by the Board.

9.10. Disclaimer of Liability. Neither Declarant, the Association nor the ARC or any of its members or advisors, shall have any responsibility for the design or quality of materials, construction or structural soundness of any Improvements, nor compliance thereby with any governmental codes or requirements. No liability relating to the construction of Improvements shall result from Declarant, the Association, the ARC, or any consultant engaged by the Association reviewing, approving, or commenting upon any proposed Improvements. Neither the Declarant, the Association, the ARC nor its advisors evaluate applications or proposals to

determine whether same meet architectural or engineering standards, or comply with government codes and regulations, nor do they evaluate the quality of workmanship and materials.

9.11. Improvement Standards. Each Lot shall be subject to the Improvement Standards. Declarant may specify different Improvement Standards for different parts of the Subdivision, and the ARC may adopt different provisions in the Standards for different areas of the Subdivision, consistent with their individual nature. All such alternate standards and provisions shall take precedence over those of general applicability, with respect to the specific Lots subject thereto. Such alternate Improvement Standards may be contained in an amendment to this Declaration, a supplemental declaration adding property, or any other instrument filed in the Public Records. At a minimum, the standards in the PUD Plan shall be met.

(a) Setbacks. All structures shall be located and set back from the front, rear, and side boundary lines of the Lot, in conformance with the PUD Plan.

Provided, however, that the Architectural Review Committee may grant variances to such setbacks (subject to compliance with the Governmental Approvals) if the Architectural Review Committee determines such variance is reasonably necessary in order to preserve a significant tree or other natural attribute of such Lot, or if the ARC determines that the topography of such Lot is such as to make compliance with such setback unreasonable, or if such variance is reasonably necessary to comply with the Governmental Approvals, or if the ARC finds there are other reasonable grounds for granting such variance, which may include, but is not limited to, finding that construction has advanced in violation of a setback, and that strict adherence to the setback is not necessary to preserve the integrity of the Improvement Standards. The ARC may require submission of such plans and supporting materials as it may deem necessary or useful in deciding whether or not to grant a variance. Any variance granted shall be in writing and in recordable form, and may be recorded in the Public Records at the expense of the applicant.

(b) Exterior Finish. Residential buildings shall each have finished exterior walls and roofs of the materials and colors installed as part of the Original Improvements and as shown in the PUD plan approved by the County. Any alteration in materials or colors shall require approval of the ARC.

(c) Minimum Area. No Home shall be constructed, reconstructed, or altered having fewer than the total number of square feet of enclosed, living area, exclusive of garages, open or screened porches, patios, balconies and terraces as may be approved by the ARC.

(d) Drainage. All grading, filling and development of a Lot shall be carried out consistent with the Governmental Approvals, and any grading or drainage plan established by the Declarant prior to the Turnover Date, and by the Association thereafter. No Owner shall cause or permit any filling, grading or other alteration of Owner's Lot which will adversely affect or interfere with the drainage within the Subdivision, or result in a substantial increase in surface water run-off to adjacent parts of the Subdivision so as to cause unreasonable accumulation of standing water thereon. Changing, altering, impeding, dumping or otherwise interfering with the flow or volume of water in any portion of the Surface Water Management System is strictly prohibited.

(e) Ancillary Equipment. All garbage, trash and refuse containers (including bear-proof trash containers), air conditioning units, oil or fuel tanks, bottled gas tanks, and permanently affixed swimming pool and hot tub or spa equipment and housing shall be underground or placed in areas attached or adjacent to structures, which areas are visually screened, enclosed or sheltered by solid or decorative walls (such as shadow block), decorative fences or landscaping, or a combination thereof, so that they shall be concealed or hidden from eye-level view from any road, street or adjacent property.

(f) Antennas.

(1) Unless and to the extent otherwise prohibited or limited by law, including the Federal Communications Commission, all antennas, masts, satellite dishes, discs or other similar telecommunication sending or receiving devices are prohibited except one small receiver located and installed pursuant to Subsection 9.11(f)(2) below, or unless expressly approved by the ARC.

(2) Unless and to the extent the following standards are otherwise prohibited or limited by law, including the Federal Communications Commission, all such devices shall be located, installed and screened as may be approved by the ARC, provided that (i) application may be submitted informally and without fee, (ii) the ARC shall approve of locations that minimize the visual impact of such devices when viewed from adjacent streets and roads, and (iii) in no event shall the ARC impose any restriction on location that unreasonably delays the installation of such device, unreasonably increases the cost of installation, or unreasonably interferes with the quality of signal received thereby.

(g) Landscaping Criteria. The landscaping plan for the Subdivision shall comply with the requirements of the Governmental Approvals with respect to location, spacing, size, maintenance, preservation, trimming and replacement of trees. Each Lot Owner will be required to plant a minimum number of trees, shrubs or bushes within one growing season after construction is completed as per the landscaping plan approved for such Lot by the ARC. Thereafter, all trees must be properly trimmed and maintained by the Owner. If a street or required Lot tree dies or is removed, the Owner of the Lot on which the tree is located, or which is adjacent to the street on which the tree is located, whichever is applicable, is responsible to replace the tree within thirty (30) days. All trees shall be consistent with the Governmental Approvals.

(h) Garages. Each Home shall have an enclosed garage as a part thereof. Garage doors shall remain closed at all times except when in use for ingress and egress.

(i) Driveways. All driveways shall be constructed of concrete, asphalt, or other materials approved by the ARC, be of a minimum width approved by the ARC, and otherwise be constructed and maintained in accordance with the Standards, if any.

(j) Fences and Walls.

(1) No fence or walls shall be permitted except in areas requiring privacy or safety (for example pools or courtyards), for concealment of service areas (for example bear-proof trash containers or mechanical equipment) or as otherwise approved by the ARC in its absolute discretion. Any fence that would restrict use of an easement must



have a gate or gates, sufficient in size, location and function, to allow the intended use of such easement. All fences must be designed, constructed and maintained consistent with the Standards, be of such materials, height, location and construction as may be approved by the ARC and in all cases are subject to the approval of the ARC.

(2) Any electronic or invisible fence must be approved by the ARC as to location, and in all events such electronic or invisible fences must be located at least five (5) feet in from a Lot boundary, or five (5) feet in from any sidewalk, whichever is further toward the interior of the Lot. In addition, if the Board so requires by rule, the Owner of a Lot having an electronic or invisible fence must post a sign or signs, at such location or locations as directed by the ARC, so that visitors or persons in the vicinity of the Lot will be advised of the presence of such fence. Any such sign shall be of such dimensions and contain such information as may be approved by the ARC, so as to provide noticeable and clear warning of the presence of such fence.

(k) **Construction Debris.** During the period of construction, reconstruction or alteration of Improvements to a Lot, all construction debris shall be placed in a dumpster or other appropriate container maintained on the Lot, and the contents of such container shall be periodically removed therefrom and hauled to an appropriate destination. Such container and debris removal shall be maintained and carried out in compliance with any applicable governmental laws, rules, regulations or franchise agreements. The container or containers shall be of such size and number, and the debris hauled at such intervals, so as to provide adequate interim storage for all construction debris generated from the Lot. In the event of a failure to comply with this provision, the Association may do so in accordance with Section 8.12, with the cost thereof to be assessed as an Owner Charge.

(l) **Utilities Underground.** All utilities installed within a Lot by or on behalf of an Owner shall be underground, except as may be otherwise approved by the ARC (in accordance with County regulations), which shall only approve exceptions in circumstances in which strict enforcement of the underground requirement would prevent practical access to utilities, or result in a violation of other provisions of this Declaration.

(m) Compliance with Governmental Approvals.

(1) No construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities include, but are not limited to, digging or excavation, depositing fill, debris or any other material or item, constructing or altering any water control structure, or any other construction to modify the Surface Water Management System Facilities. If this Subdivision includes a wetland mitigation area, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the ARC or Board.

(2) No Improvements or other construction upon, alterations to or use of, a Lot shall intrude upon or otherwise impact any Common Property or interfere with or disturb any required drainage boundaries, facilities or contours, or any buffer area reflected on the Plat or PUD Plan, or be otherwise in violation of the Governmental Approvals. Each Owner (and the Association with respect to areas within the Subdivision for which it is responsible for maintenance hereunder) shall comply with any seeding and grassing

requirements and noxious weed control requirements reflected or required by the Governmental Approvals. The Association and each Owner shall otherwise observe and comply with the terms and requirements of the Governmental Approvals.

(n) Pools and Hot Tubs. No above-ground swimming pools shall be permitted at any time anywhere within the Subdivision. This provision shall not be deemed to prohibit hot tubs, therapy pools and hydra spas that are incorporated into other Improvements if approved by the ARC. The ARC may approve pools incorporated into other Improvements, even though such pool may be slightly above grade. All pools shall be enclosed and otherwise constructed to comply with applicable rules, regulations and standards of all governments having jurisdiction. The term "enclosed" shall mean that the pool and surrounding patio or deck area perimeters shall be bounded on all sides by parts of the Home, fences, screen cages, or combinations thereof, as may be approved by the ARC. Such enclosures may have reasonable gates and doors which may be closed to make the enclosure continuous. All such pools, fencing, screening and caging shall be subject to Architectural Review.

ARTICLE 10 COMPLIANCE WITH CODE

The following provisions are mandated by the Code and are applicable to the Subdivision.

10.1. Further Disposition of Open Space. With respect to such portions of the Common Property or any interest therein that may be deemed required common open space under applicable governmental regulations, subsequent to the conveyance to the Association there shall be no further disposition of such Common Property that is real property by sale, dissolution of the Association or otherwise, except to an organization conceived and organized to own and maintain such property without first offering to dedicate the same to the County or other appropriate governmental agency.

10.2. Disturbance of Common Property. No portion of the Common Property shall be denuded, defaced or otherwise disturbed in any manner at any time, except for maintenance, repair and improvement, without the prior written approval the Association and the County (if required) or such successor agency as may assume the duties. It shall be the responsibility of the Association to maintain the Common Property and Open Spaces, including but not limited to, the responsibility to maintain and comply with all local and state laws and regulations relating to the control of noxious weeds.

10.3. Right of Entry by County. A right of entry upon the Common Property is hereby granted to County and other governmental law enforcement officers, health and pollution control personnel, emergency medical service personnel, and firefighting personnel, and to governmental suppliers of utilities, while in the pursuit of their duties. All such governmental personnel are further granted authority to enforce cleared emergency vehicle access in the performance of their duties to the extent same may be reasonably necessary.

10.4. Compliance with Law. Notwithstanding any other provision of this Declaration to the contrary, there shall be no violation of federal, state or local law permitted within the Subdivision, including but not limited to, limiting solid fuel burning devices to one approved device



per single family residence in accordance with the County Environmental Health Department requirements.

10.5. Required Materials. The Code may mandate that certain documents be submitted to the County, which documents must be reviewed and approved by the County and, once approved, said documents may be recorded as part of the documentation for the Subdivision.

**ARTICLE 11
EASEMENTS**

Each of the following easements is established and reserved over, across, under and through the applicable part of the Subdivision, and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked. To the extent any such easement may benefit or be in favor of an Owner or such Owner's Lot, such easement shall be deemed an appurtenance to such Lot.

11.1. Association Easement for Maintenance. Declarant reserves for itself, the Association, and their respective successors, assigns, and designees, the non-exclusive right and easement over all Lots, as may be reasonable or necessary to provide access to the Lots and Common Property, in order to carry out the maintenance, inspection, repair, replacement, and other rights and responsibilities of the Association, pursuant to this Declaration and the Governmental Approvals. The right and easement of access established hereby shall include the right to enter upon any Home, as may be reasonably necessary to effect reconstruction after casualty damage or to assure compliance with the other provisions of this Declaration, and in all events, such access shall be exercised in a reasonable manner at reasonable times. To the extent this Easement is over Lots to afford access to Common Property, the easement shall be used only when there is no practical access available for such purposes through and over other Common Property or public streets, or through specific easements of access for such purpose.

11.2. Encroachment Easements. If any Home or other Permitted Improvement to a Lot encroaches upon the Common Property or upon any other Lot for any reason other than the intentional act of the Owner of the encroaching Lot, then an easement for such encroachment shall exist to the extent of that encroachment so long as the encroachment exists. After initial development of the Subdivision, except for the repair, replacement or reconstruction of a Permitted Improvement in accordance with this Declaration, no additional encroachments by a Permitted Improvement shall be permitted as a result of the intentional act of any Owner, or such Owner's agents, the Association, or its agents.

11.3. Access Easement. An access easement is hereby established, and shall exist, over those parts of property, as reflected on the Plat. Such easement shall be for the purpose of access to the Lots adjacent thereto, such access, however, to be limited to that reasonably necessary to maintain, repair, and replace the Improvements therein, and the Home located on such Lot. In no event shall such access easement be used by motorized vehicles. The Board may adopt reasonable rules and regulations with respect to such use.

11.4. Easements Deemed Created. Each easement described in this Declaration shall be deemed to have been granted or reserved, as applicable, when the Declaration, or any



Supplemental Declaration submitting additional land, is recorded in the Public Records, or, to the extent necessary to its creations, upon conveyance of a Lot from Declarant to the first Owner, without necessity for specific reference to such easement.

**ARTICLE 12
SURFACE WATER MANAGEMENT SYSTEM**

The provisions of this Article 11 shall apply to the Surface Water Management System and Surface Water Management System Facilities, which are developed, operated, and maintained pursuant to the terms and conditions of the Declaration.

12.1. Easement. Declarant hereby reserves for itself, its successors and assigns, and grants to the District, the Association, and their respective designees, a perpetual, non-exclusive easement over and across all areas within the Subdivision in which there are Surface Water Management System Facilities. The purpose of such easement shall be for the operation, maintenance, inspection, monitoring, repair, and replacement of the Surface Water Management System Facilities. The easement shall include the reasonable right of access across the Lots and Common Property to carry out any maintenance or operational right or responsibility of Declarant or the Association.

12.2. Responsibility for Operation. The Association shall be responsible for the operation and maintenance of the Surface Water Management System Facilities. The Association's cost with respect thereto shall be a Common Expense. Operation and maintenance and reinspection reporting with respect to the Surface Water Management System Facilities shall be performed in accordance with the terms and conditions hereof. Notwithstanding that responsibility may not have yet been transferred to the Association, the cost of operation and maintenance of the Surface Water Management System Facilities, prior to such transfer, shall be paid by the Association as a Common Expense.

12.3. Enforcement. The Association has the right to take enforcement measures, including a civil action for injunction and/or penalties, against any Owner to compel it to correct any outstanding problems with the Surface Water Management System Facilities for which the Association has responsibility.

12.4. Activities Prohibited. No unauthorized construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities may include, but are not necessarily limited to, digging or excavation, depositing fill, debris or any other material or item, constructing or altering any water control structure, or any other construction to modify the Surface Water Management System Facilities. Construction and maintenance activities which are consistent with the design and permit conditions approved may be conducted without specific written approval.

12.5. Liability. Neither Declarant, the District, nor the Association shall have any liability whatsoever to Owners, Guests, Tenants, other Occupants, or invitees in connection with the Surface Water Management System, any easements with respect thereto, or any part of the Surface Water Management System Facilities. Each Owner, for itself and its guests, tenants, or invitees, releases Declarant, the District, and the Association from any liability in connection therewith.



All persons are hereby notified that from time to time wildlife may inhabit or enter into the Subdivision or water bodies contained within or adjacent to the Subdivision and may pose a threat to persons, pets and property, but that the Listed Parties are under no duty to protect against, and do not in any manner warrant against, any death, injury or damage caused by such wildlife.

All persons are hereby notified that slopes within certain areas of the Subdivision, or lands adjacent thereto, may be steep. By their acceptance of a deed to, or use of, any Lot within the Subdivision, all Owners, Occupants, and other users of such Lot shall be deemed to have agreed to hold harmless the Listed Parties from all liability or damages arising from the design, construction, or topography of any slopes.

12.6. Indemnity. From and after the recording of this Declaration, or the transfer of responsibility for the operation of the Surface Water Management System Facilities to the Association, whichever is later, the Association agrees that it shall hold Declarant harmless from all suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Surface Water Management System Facilities occasioned in whole or in part by any action, omission of the Association or its agents, contractor, employees, servants, or licensees, but not excluding any liability occasioned wholly or in part by the acts of the Declarant, its successors or assigns as such. Upon completion of construction of the Surface Water Management System Facilities, Declarant shall be deemed to have assigned all its rights, obligations and duties with respect thereto to the Association, effective upon such completion or the effective transfer of responsibility to the Association, whichever is later. The Association shall thereupon assume all such rights, duties and liabilities and shall indemnify and hold Declarant harmless therefrom.

12.7. Dissolution of Association. If the Association is permanently dissolved, as provided in the Articles, the control or right of access to the property containing the Surface Water Management System Facilities shall be conveyed or dedicated to an appropriate governmental unit or public utility, and if not accepted, then the Surface Water Management System Facilities shall be conveyed to a not-for-profit corporation similar to the Association.

**ARTICLE 13
GENERAL PROVISIONS**

13.1. Enforcement. The Association or any Owner shall have the right to enforce by proceedings at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including the right to prevent the violation of any such provisions and the right to recover damages for such violations; provided, however, that with respect to Assessments, Owner Charges, and liens therefore, the Association, on determination of the Board, shall have the exclusive right to the enforcement thereof. Provided further, no enforcement proceedings may be maintained by the Owners of fewer than three (3) Lots. Failure of the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

13.2. Severability. Invalidation of any part of this Declaration by a court of competent jurisdiction shall not affect any other provisions, which shall remain in full force and effect.



13.3. Covenants. The covenants, conditions, restrictions, easements and terms of this Declaration shall run with the land, bind all the property subject hereto and inure to the benefit of and be enforceable as provided above, for a term of 50 years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument of termination has been signed by (a) the Owners of at least two-thirds of the Lots, and (b) mortgagees holding first mortgages encumbering fifty (50%) percent of all those Lots that are encumbered by first mortgages, and such instrument has been recorded at least one (1) year prior to end of any such period. In such event, this Declaration shall be terminated upon the expiration of the fifty (50) year term or applicable ten (10) year extension during which such instrument was recorded.

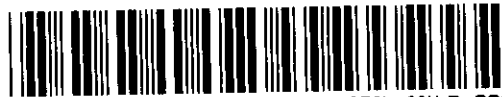
13.4. Construction. The Community Documents shall be liberally construed to give effect to their purpose of creating a plan for a high quality single family residential community. Article and section headings have been inserted for convenience only and shall not be considered in interpretation or construction of the document. The Community Documents shall be construed under the laws of Colorado, and shall not be construed more strongly against any party regardless of the extent to which any party may have participated in the drafting thereof. Whenever the context of the Community Documents require, the singular shall include the plural and the plural the singular, and any one gender may refer to any other gender. Venue for any action or proceeding to enforce or construe this Declaration or any of its exhibits, or for any other matter arising out of this Declaration, shall be in a court sitting in Routt County, Colorado.

13.5. Amendment. This Declaration may be amended only in accordance with this Section. Each and every provision of this Declaration shall run with and bind the Property in perpetuity. This Declaration and the Plat may be amended pursuant to C.R.S. §38-33.3-217 (Amendment of Declaration). Pursuant to the Act, the Declaration may be amended by the Declarant under certain specified conditions. Pursuant to the Act, the Declaration may be amended by the Board of Directors of the Association under certain specified conditions described therein. Otherwise, all amendments must be by an instrument approved in writing by not less than sixty-seven percent (67%) of the Owners. Such amendments shall be effective when duly recorded; provided, however, that any amendment must comply with the statutes of the State of Colorado and the resolutions of Routt County, Colorado, or of any governmental entity having jurisdiction over the Property, in existence at the time such amendment becomes effective. Except with the express written consent of all Owners, the manner in which Common Expenses are assessed shall not be altered (pursuant to C.R.S. §38-33.3-217(4)). All amendments shall be in accordance with C.R.S. §38-33.3-217 (Amendment of Declaration). Termination of the Common Interest Planned Community shall be governed by C.R.S. §38-33.3-218 (Termination of Common Interest Planned Community).

(a) By the Board. Additionally, the Board, by a two-thirds vote of the entire Board, may effect an amendment to the Declaration or the Bylaws in any of the following circumstances:

(i) To bring the Declaration or the Bylaws into compliance with the provisions of subsequently enacted laws, rules or regulations adopted by governmental authority which, in the opinion of counsel for the Association, are reasonably likely to be applicable to the Association.

(ii) If the Board determines that as a result of new, changing or evolving technology, materials, procedures, devices or standards the Declaration should be



amended to take cognizance of such matters so that the overall intent of the Declaration shall not be frustrated by changing circumstances.

(iii) If the Board determines, in the reasonable exercise of its judgment, that such amendment is necessary to comply with regulations of the Veterans' Administration, the Federal Housing Administration, the Office of Interstate Land Sales Registration, the Federal National Mortgage Association, the Federal Home Loan Corporation, the Federal Home Loan Bank Board or other similar governmental agency, where non compliance with such regulations substantially interfere with, restricts or limits either the marketability of Lots or the ability of Owners to obtain mortgage financing.

(iv) If the Board determines, in the reasonable exercise of its judgment, that there is a scrivener's error or other error or omission that results in an ambiguity, inconsistency or an incomplete provision, or if experience with a particular provision results in an ambiguity with respect to the practical application of such provision.

Provided, however, that no Board adopted amendment to the Declaration or Bylaws pursuant to this Section shall go into effect until not fewer than sixty (60) days notice of the amendment shall have been given to the Members. If, during the time between the giving of such notice and the proposed effective date stated therein, Members having not less than ten (10%) percent of all Voting Interests request in writing that a meeting of the Members be called, then and in such event, the Board shall call such meeting promptly, the purpose of which meeting shall be to determine whether or not the amendment adopted by the Board shall go into effect. Effectiveness of any amendment shall be suspended until the end of such meeting. At such meeting if a quorum is obtained, a majority of those Voting Interests present, in person or by proxy, may determine that the amendment adopted by the Board, or any part thereof, shall not be effective. If a quorum is not obtained at such meeting, or if at such meeting there is no majority vote against such amendment, then the amendment shall go into effect at the later of the date specified in the notice, or the conclusion of such meeting. Thirty (30) days after the Certificate of any amendment adopted by the Board pursuant hereto is recorded in the Public Records, the authority of the Board to adopt such amendment shall be conclusively presumed, shall be binding upon all Owners, and may not be challenged in any court proceeding or otherwise.

(b) **Approval Procedure.** Any amendment approved or disapproved by the Members pursuant to this Section 13.5 shall be approved or disapproved at an annual, regular or a special meeting called for that purpose, pursuant to written notice setting forth the proposed amendment or a summary of the changes to be effected thereby, such notice to be given within the time and in the manner provided for in the Bylaws. In lieu of voting in an annual, regular or special meeting as herein provided, amendments may be approved in writing executed by the requisite number of Owners; provided, however, that the requisite majority for an amendment in writing shall be equal to that for a meeting at which all Members are in attendance.

(c) **Limitation.** Anything contained herein to the contrary notwithstanding, no amendment which abridges, impairs, prejudices, amends, alters or otherwise affects the rights, privileges, exemptions or priorities of the Declarant shall be effective until five (5) years after the Turnover Date, unless the Declarant consents thereto in writing. Moreover,



anything contained in this Declaration to the contrary notwithstanding, any provision of this Declaration which establishes a specific percentage or number of votes required for the approval, consent, or concurrence of the Owners on any particular matter, may not be amended except upon the approval of such amendment by the percentage or number of voting interests specified in such provision, or such other number as may be otherwise provided for in amendment, whichever is greater.

(d) For Amendments Affecting Surface Water Management System. Anything contained in this Section to the contrary notwithstanding, no amendment of this Declaration, the Articles or Bylaws, which would affect the Surface Water Management System Facilities or the operation and maintenance of the Surface Water Management System Facilities shall be effective without the prior written approval of the Association or its successor.

(e) Certificate of Amendment. Any amendment to the Declaration or Bylaws adopted or approved by the Members or the Board under this Section 13.5 shall be evidenced by a Certificate of Amendment executed by the Association in the form required for the execution of a deed. If the consent of the Declarant is required for such amendment, and if the Declarant has so consented to such Amendment, then Declarant shall join in the execution of such Certificate. Amendments effected by the Declarant that do not require Member approval may be executed by the Declarant alone, without the necessity of a certificate of the Association. Certificates of Amendment shall set forth that the amendment has been adopted and approved in accordance with the Declaration or Bylaws, as applicable, but if the Certificate does not so state, same shall not affect the validity of the Certificate or the amendment, and the Certificate shall be presumed so to state. Amendments to the Articles shall be filed with the Colorado Secretary of State as may be required by applicable law, and such amendment shall be evidenced by a Certificate in the same manner as a Certificate of Amendment to the Declaration.

13.6. Attorney's Fees. If any action is instituted to enforce or construe the provisions of the Community Documents, or any of them, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment a reasonable attorney's fee and the costs of such suit. Additionally, if it becomes necessary for the Association to retain the services of an attorney to obtain compliance of an Owner with the provisions of the Community Documents, or any of them, without necessity of instituting legal proceedings, then fees and costs incurred by the Association with respect to such enforcement shall be deemed the same as fees and costs incurred by the Association as a prevailing party in legal proceedings. If the Association is a prevailing party in such action, or deemed so pursuant hereto, the amount of such attorney's fees and costs shall be an Owner Charge with respect to any Lot and its Owner if such Owner was the non-prevailing party in such litigation or deemed so pursuant hereto.

13.7. Declarant Provisions. Declarant, for itself, and its designees, further reserves the right to erect temporary structures and use trailers in its development, construction and marketing of the Subdivision, and to establish and use any part of the Property for the development, construction, marketing, promotion and sale of Lots, and Improvements thereto, notwithstanding any restriction, prohibition or other provision of this Declaration that would otherwise limit or prohibit Declarant's activities. So long as Declarant owns any Lot of record, it may establish licenses, reservations, easements and rights-of-way in favor of itself, the Association, suppliers of Utilities and similar services, and public authorities as may from time to time be reasonably



necessary to the proper development and disposition of the Subdivision. In any instance where a structure has been erected upon a Lot, or the construction thereof is substantially advanced in a manner that violates the restrictions of this Declaration, or in such a manner that same encroaches on any Lot line, easement area, setback, or Common Property, or in any other circumstance in which an Owner or Lot is not in compliance with this Declaration, Declarant reserves the right to release the Lot, and its Owner, from the restriction, and to grant an exception and variance to permit the encroachment by the structure or other instance of noncompliance, so long as Declarant, in the exercise of its sole discretion, determines that the release, waiver or exception will not materially and adversely affect the health, safety and welfare of present and future Owners, the value of adjacent Lots, and the appearance of the Subdivision.

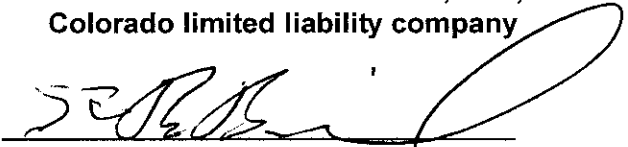
13.8. Assignment by Declarant. Declarant's rights hereunder may be assigned to any successor to all or any part of Declarant's interest in the Subdivision by express assignment incorporated in a deed or by separate instrument, and such Declarant rights shall inure to any mortgagee of Declarant who acquires title to undeveloped portions of the Subdivision by foreclosure or deed in lieu of foreclosure or to a successor Declarant acquiring title through foreclosure or from a mortgagee or other person acquiring title through such foreclosure or deed in lieu thereof. Declarant may designate in writing one or more successor Declarants as to portions of the Subdivision or as to all or any portion of the rights, powers or duties granted Declarant hereunder, which instrument shall detail the extent and nature of the rights of Declarant assigned thereby. After any such assignment is recorded among the Public Records, the assignee shall stand in the place of Declarant as fully as if it had originally been the Declarant hereunder to the extent of the assignment described therein. Any mortgage of all or substantially all of the undeveloped portions of the Subdivision executed by Declarant or any successor to Declarant shall be deemed to carry with it a conditional assignment of such Declarant rights unless otherwise specified therein.

13.9. Rights of Mortgagees. The Association shall make available for inspection upon request, during normal business hours and under reasonable circumstances, the Community Documents and the books, records and financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Subdivision.

13.10. Notice Regarding Stagecoach Covenants and Stagecoach Property Owners Association ("SPOA"). Lot Owners are notified that Red Hawk Village is located within the boundaries of the Meadowgreen at Stagecoach Subdivision. All Owners of any Lot in Red Hawk Village shall (i) be a Class A Member of the Stagecoach Property Owners Association subject to the payment of dues as a member, and (ii) shall be bound by the covenants recorded at File No. 7073 of the Routt County records ("Stagecoach Covenants"). SPOA dues will not be assessed against Red Hawk Village Lots until the Lots are released by the County and are available for individual lot sales. As to Lots which have been released by the County, SPOA dues will be first assessed at closing of the sale to an individual lot buyer and SPOA dues for the year of closing will be paid by the lot buyer at closing, subject to proration. Lots, which have been released by the County, but have not been sold by Declarant, will not be subject to assessment of SPOA dues until two (2) years after the date of release by the County. Improvements to or upon Lots in Red Hawk Village are subject to the design review provisions set forth in the Stagecoach Covenants.

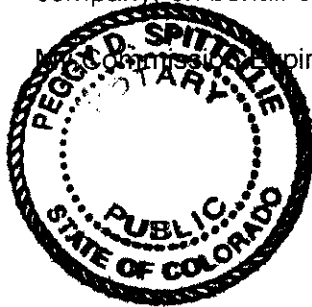
IN WITNESS WHEREOF, Declarant has caused these presents to be executed in its name by its Manager duly authorized as of the day and year first above written.

Signed, sealed and delivered in the presence of: **SAGEBRUSH TRAIL HOLDINGS, LLC, a Colorado limited liability company**

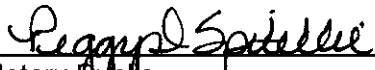
By: 
Steven R. Barwick, Manager

**STATE OF COLORADO
COUNTY OF ROUTT**

The foregoing instrument was acknowledged before me this 3rd day of April, 2006, by Steven R. Barwick, as Manager of Sagebrush Trail Holdings, LLC, a Colorado limited liability company, on behalf of the company, who is personally known to me.



My Commission Expires: 11/4/2007


Notary Public



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04/12/2006 11:49

Kay Weinland Routt County, CO DECL COV R 226.00 D 0.00

Exhibit "A"

No. 9 Multi-Family, A REPLAT OF COMMON AREA NO. 3, MULTIFAMILY NO. 1, 2, 5, 8, 9 AND 10, AND NO. 6 AND 11 GOLF COURSE OF MEADOWGREEN AT STAGECOACH, according to the recorded Plat thereof filed March 13, 1973 at File No. 7348, County of Routt, State of Colorado.

