

**THIRD AMENDED, RESTATED AND CONSOLIDATED DECLARATION OF  
COVENANTS, CONDITIONS, LIMITATIONS, RESTRICTIONS, RESERVATIONS,  
LIENS AND CHARGES  
FOR THE  
RANCH AT ROARING FORK  
AND THE  
COMMON RECREATION RESERVE AT THE RANCH AT ROARING FORK**

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FOR THE  
RANCH AT ROARING FORK  
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COMMON RECREATION RESERVE AT THE RANCH AT ROARING FORK**

This THIRD AMENDED, RESTATED AND CONSOLIDATED DECLARATION OF COVENANTS, CONDITIONS, LIMITATIONS, RESTRICTIONS, RESERVATIONS, LIENS, AND CHARGES FOR THE RANCH AT ROARING FORK AND THE COMMON RECREATION RESERVE AT THE RANCH AT ROARING FORK is made on \_\_\_\_\_, 2024, by the Ranch at Roaring Fork Homeowners Association, Inc., a Colorado nonprofit corporation (the "Association").

**RECITALS**

**A.** The Ranch at Roaring Fork is a planned community located in Garfield County, Colorado, containing approximately 440 acres of real property, including the Common Recreation Reserve, consisting of approximately 339.503 acres of real property, all as more particularly described in the attached Exhibit "A" (the "Ranch"), and as depicted on the Final Plat Phase I, Roaring Fork Ranch recorded in Garfield County, Colorado on September 21, 1972 at Reception No. 255351; Roaring Fork Ranch, Final Plat – Phase III, Common Recreation Reserve and Homestead Reserve recorded on July 12, 1973 at Reception No. 259145; Condominium Map for Ranch at Roaring Fork Condominiums recorded on October 23, 1973 at Reception No. 260426; Ranch at Roaring Fork Phase V Final Plat recorded on July 7, 1976 at Reception No. 273384; Ranch at Roaring Fork Phase IV Filing No. One recorded on October 12, 1976 at Reception No. 274823; Final Plat Phase II, Town Center & "D" Units, Roaring Fork Ranch recorded on March 14, 1978 at Reception No. 280467; Ranch at Roaring Fork IV Filing No. Three recorded on February 27, 1979 at Reception No. 292314; Amended Final Condominium Plat of the Ranch at Roaring Fork recorded on February 19, 1986 at Reception No. 368927; Resubdivision of Parcel 2, Phase II, Town Center & "D" Units, Ranch at Roaring Fork Final Plat recorded on September 29, 1986 at Reception No. 374870; Partial Amended and Boundary Correction Plat Ranch at Roaring Fork Phase III Common Recreation Reserve and Homestead Reserve recorded on June 28, 1996 at Reception No. 49057; Final Plat Ranch Creek Planned Unit Development Subdivision of Parcels A & B, Resubdivision of Parcel 2, Phase II, Town Center, and "D" Units of Ranch at Roaring Fork Final Plat, and Parcel 1, Final Plat, Phase II, Town Center & "D" Units, Roaring Fork Ranch recorded on October 24, 2000 at Reception No. 571289 (the "Ranch Creek Plat"); Second Amended Plat of Ranch at Roaring Fork Phase III Common Recreation Reserve and Homestead Reserve to Exclude Described Property recorded on December 5, 2001 at Reception No. 593079; and the Third Partial Amended and Boundary Correction Plat of Ranch at Roaring Fork Phase III Common Recreation Reserve & Coffman Ranch North Parcel recorded on September 9, 2008 at Reception No. 755354, all as amended or supplemented (collectively, the "Plat").

**B.** The Ranch at Roaring Fork was created pursuant to the Plat and the Declaration of Establishment of Covenants, Conditions, Limitations, Restrictions, Reservations, Liens, and

Charges for Ranch at Roaring Fork Condominiums, a Resort Condominium Project recorded in Garfield County, Colorado on October 23, 1973, in Book 451 at Page 48, as amended by the Amended Declaration of Covenants, Conditions, Limitations, Restrictions, Reservations, Liens, and Charges for Ranch at Roaring Fork recorded on October 26, 1977, in Book 502 at Page 82, the Second Amended Declaration of Covenants, Conditions, Limitations, Restrictions, Reservations, Liens, and Charges for Ranch at Roaring Fork recorded on August 7, 1985 at Reception No. 364004, the Amendment to the Ranch Declaration recorded on December 18, 2001 at Reception No. 593872; the Amendment to the Ranch Declaration recorded on January 9, 2013 at Reception No. 829676; the Supplementary Declaration and Amendment to the Ranch Declaration on October 12, 2015 at Reception No. 869163 (the "Supplementary Declaration"), all as amended or supplemented (collectively, the "Ranch Declaration").

C. The Common Recreation Reserve was created pursuant to the Declaration of Easement and Protective Covenants for Common Recreation Reserve at the Ranch at Roaring Fork recorded on July 12, 1973 at Reception No. 259142, as amended and replaced by the Amended Declaration of Easements and Protective Covenants for Common Recreation Reserve at the Ranch at Roaring Fork recorded on October 26, 1977 at Reception No. 281441, as amended by the Amendment to the Common Recreation Reserve Declaration recorded on December 18, 2001 at Reception No. 593873, all as amended or supplemented (collectively, the "CRR Declaration").

D. The real property depicted in the Ranch Creek Plat and made subject to the Declaration of Protective Covenants for Ranch Creek Planned Unit Development Subdivision recorded on February 16, 2001 at Reception No. 576170, as amended or supplemented (the "Ranch Creek Declaration"), was annexed into the Ranch pursuant to the Supplementary Declaration, which identifies portions of the Ranch Creek Declaration that remain applicable to the Ranch Creek Lots.

E. The Association desires to amend, restate and consolidate the Ranch Declaration, the CRR Declaration, and the Ranch Creek Declaration (collectively, the "Current Declarations") in their entirety as set forth in this Declaration to remove provisions that are no longer applicable, clarify the provisions that apply to the Ranch, or any portion thereof, ensure the efficient administration, operation and management of the Project, and to preserve, protect and enhance the Ranch, the Common Recreation Reserve, the Lots and Units, and the value thereof.

F. This Amended, Restated and Consolidated Declaration of Covenants, Conditions, Limitations, Restrictions, Reservations, Liens, and Charges for the Ranch at Roaring Fork and the Common Recreation Reserve at the Ranch at Roaring Fork has been approved by the Owners holding 67% of the votes in the Association pursuant to C.R.S. § 38-33.3-217, and has been approved by 75% of the record holders of mortgages encumbering any Lot or Unit pursuant to the Ranch Declaration, Art. XIV § 15.1(b)

In consideration of the foregoing, the Association hereby amends, restates and consolidates the Current Declarations as follows:

## **ARTICLE I** **PURPOSE AND SUBMISSION**

**1.1 Incorporation of Recitals.** The forgoing Recitals are incorporated in their entirety by this reference.

**1.2 Purpose.** The purpose of this Declaration is to update, repeal, replace and combine the Current Declarations, as amended or supplemented, to maintain the Property as a highly desirable scenic residential area and an area of natural beauty and character including distinctive terrain features, pastoral areas, views and setting in harmony with the natural surroundings, and to preserve, protect and enhance the value and desirability of the Lots and Units, and to promote the use and enjoyment of the Lots, Units, and the recreational and limited commercial facilities located within the Property, and to safeguard the health, comfort, safety, convenience and welfare of the Owners. Additionally, this Declaration provides for the continued preservation of the Common Recreation Reserve as open space area devoted to recreational use, with such incidental commercial activities as may be related to such use (e.g. pro shop, riding stables, etc.).

**1.3 Submission.** The Association submits the Property to the covenants, conditions, restrictions and easements as set forth in this Declaration, subject only to those provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. (the “Act”) adopted by this Declaration and those provisions of the Act that apply pursuant to C.R.S. § 38-33.3-117.

**1.4 Covenants Running with the Land.** To accomplish the purposes indicated above, the Association hereby imposes upon the Property the covenants, conditions, restrictions, easements, reservations, and other provisions of this Declaration, and declares that the Property shall be held, used, leased, mortgaged, sold, and conveyed subject to the terms of this Declaration. This Declaration shall run with the land and shall inure to the benefit of and is binding upon all parties having any right, title, or interest in any part of the Property, including the Association, the Owners and their Guests.

## **ARTICLE II** **DEFINITIONS**

The following words when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

**2.1** “Act” means Colorado Common Interest Ownership Act, C.R.S.38-33.3-101 et seq.

**2.2** “Allocated Interests” means the votes in the Association and the percentage of the Common Expense liability assigned to each Unit or Lot as set forth in Exhibit B.

**2.3** “Architectural Advisory Committee” or “AAC” means the Architectural Advisory Committee defined in Article X.

**2.4** “Architectural Guidelines” means the guidelines, standards, and procedures adopted or amended by the Association pursuant to Article X below.

**2.5** "Articles" means the Articles of Incorporation of the Ranch at Roaring Fork Homeowners Association, Inc., as amended.

**2.6** "Assessments" means all the assessments levied by the Association against a Unit or Lot, or the Owner thereof, pursuant to this Declaration or the Act.

**2.7** "Association" means Ranch at Roaring Forking Homeowners Association, Inc., a Colorado nonprofit corporation, or its successors or assigns, charged with the duties and obligations of administering, managing and operating the Project.

**2.8** "Board of Directors" or "Board" means the Association's governing body elected to perform the Association's obligations relative to the administration, operation, and management of the Project.

**2.9** "Bylaws" means the Bylaws of the Association, as amended from time to time.

**2.10** "Common Elements" means all of the Property as labeled on the Plat, except the independently owned Units or Lots, which the Association owns for the common use and enjoyment of the Owners on a non-exclusive basis. Without limiting the generality of the foregoing, the Common Elements include the following:

**a.** the Common Recreation Reserve;

**b.** The unimproved land surrounding the Lots and Condominium Parcel, the easements benefiting the Project as described, depicted, granted or reserved in this Declaration or the Plat, the water, sewer and other utility or communication lines and facilities serving the Project which are not owned by any public entity, the trails, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, and related facilities upon the Property.

**c.** all of the Condominium Parcel and Improvements thereon, except the Units, together with related facilities, equipment, and easements including, without limitation:

**i.** all foundations, columns, girders, beams, and any other structural components of any Condominium Building;

**ii.** the exterior walls of any Condominium Building, the main or bearing walls and the partition walls that divide Units within any Condominium Building, the main or bearing subflooring and the roofs of any Condominium Building;

**iii.** All entrances, exits, halls, corridors, bridges, lobbies, basements, lounges, linen rooms, storage space, elevators, stairs, stairways, and fire escapes of any Condominium Building not within any Unit;

**iv.** All parts of the Condominium Building or any facilities and fixtures whether or not within a Unit which are or may be necessary or convenient to the support, existence

use, occupation, operation, maintenance, repair, or safety of any such Condominium Building or any part of such a Condominium Building, including another Unit;

**v.** All utility, service, and maintenance rooms, space, fixtures, apparatus, installation, and facilities for power, light, gas, telephone, television, hot water, cold water, heating, refrigeration, air conditioning, incineration, or similar utility service for maintenance purposes, including furnaces, tanks, pumps, motors, fans, compressors, vents, ducts, flues, wires, pipes, conduits, sewer, and water treatment facilities, water storage facilities and other similar fixtures, apparatus, installations and facilities located on or in any part of or serving any Condominium Parcel, or on any real property leased to the Association and used in connection with such fixtures, apparatus, installation and facilities, and all easements and appurtenances thereto; and all buildings, rooms, or premises for lodging or housing of managers, custodians, or persons in charge of or employed to handle, supervise, operate, or maintain the Project;

**vi.** Except that the Common Elements shall not include utility fixtures, apparatus, installations, or facilities which are located within a Unit and exist solely to serve the Unit within which they are located; provided, however, the water and sewer fixtures and pipes at the point of tap from the Unit to the common fixtures and pipes shall be deemed Common Elements;

**d.** Improvements, together with related facilities and equipment, in such other areas as may be provided for community recreation, utility, or for common use; streets, green areas, and lakes; all other parts of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which is normally and reasonably in common use including the air space above such land.

**e.** All other parts of the Project designated as Common Elements and existing for the use of one or more of the Owners;

**f.** The term Common Elements shall also include the Limited Common Elements, which are exclusively reserved for use of the Owner of one or more, but fewer than all, of the Units.

**2.11** "Common Expenses" means:

**a.** any and all of the Association's costs, expenses and liabilities including, without limitation, costs, expenses and liabilities incurred for (i) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (ii) providing facilities, services and other benefits to Owners and their Guests; (iii) administering and enforcing the covenants, conditions, restrictions, reservations, easements, policies, procedures, rules or regulations set forth in the Governing Documents, (iv) levying, collecting and enforcing the Assessments; (v) regulating and managing the Project; (vi) operating the Association; (vii) utilities not separately metered and billed directly to Unit or Lot Owners;

b. other expenses declared to be Common Expenses pursuant to the Association Documents or the Act, and expenses agreed upon as Common Expenses by the Association; and

c. reserves for any such costs, expenses and liability.

**2.12** "Common Recreation Reserve" or "CRR" means the real property located within the Ranch as depicted on the Plat which is more particularly described in the attached Exhibit B.

**2.13** "Condominium Building" means each of the buildings shown on the Map(s) or Plat(s), and constructed upon a Condominium Parcel in which Units are located.

**2.14** "Condominium Parcel" means any parcel of real property on which a Condominium Building is constructed.

**2.15** "Declaration" means this Third Amended, Restated and Consolidated Declaration of Covenants, Conditions, Limitations, Restrictions, Reservations, Liens, and Charges for Ranch at Roaring Fork and the Common Recreation Reserve at the Ranch at Roaring Fork, as amended or supplemented.

**2.16** "Director" means a member of the Board of Directors.

**2.17** "Garfield County Records" means the real property records in the office of the Clerk and Recorder of Garfield County, Colorado.

**2.18** "Governing Documents" means this Declaration, the Plat, the Articles and the Bylaws of the Association, and any procedures, rules, regulations or policies adopted under such documents by the Association.

**2.19** "Guest" means an Owner's family members, tenants, invitees, licensees, employees, contractors or agents.

**2.20** "Homestead Parcel" means the parcel depicted and described in the Roaring Fork Ranch, Final Plat – Phase III, Common Recreation Reserve and Homestead Reserve recorded on July 12, 1973 at Reception No. 259145 as amended or supplemented, and is subject to the Declaration of Protective Covenants for Reserved Parcel the Ranch at Roaring Fork Condominiums recorded on September 12, 1973 at Reception No. 259924 as amended or supplemented. The Homestead Parcel is located within the Ranch boundaries but it is not subject to the Declaration.

**2.21** "Improvement" means all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, residential dwellings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, and irrigation systems; landscaping including, without limitation, hedges, windbreaks, plantings, planted trees and shrubs; poles, signs, exterior air conditioning and water softener fixtures or equipment; and utility installation improvements including, without limitation,

conduits, wires, pipes, apparatus, installations, facilities or equipment for power, light, gas, telephone, television, water, sewer, or similar utility services.

**2.22** "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration or Plat, or by operation of C.R.S. § 38-33.3-202(1)(b) or (1)(d), for the exclusive use of one or more, but fewer than all, of the Unit or Lot Owners. Without limiting the generality of the foregoing, the Limited Common Elements include the following:

**a.** Each Condominium Building and the related Improvements including, without limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, patios, balconies, entrances and exits, and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by some or all of the Units in the Building, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith.

**b.** Except as otherwise provided, if a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside a Unit's designated boundaries, the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, the use of which is limited to that Unit, but any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

**c.** Any awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, and exterior doors and windows, or other fixtures designed to serve a single Unit, located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit and their use is limited to that Unit. Exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Without limiting the foregoing, the Limited Common Elements shall include: stoops, steps, and walls above door openings at the entrances to the Building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access; utility areas or storage spaces outside and allocated to any Unit.

**2.23** "Lot" means any portion of the Property depicted on the Plat, which may be independently owned, whether improved or unimproved, except a Unit.

**2.24** "Manager" means a Person that the Association may engage to perform certain duties, powers or functions as the Board may authorize from time to time.

**2.25** "Map" means a condominium map recorded in the Garfield County Records that depicts Units located within a Condominium Parcel, as amended or supplemented in accordance with this Declaration.

**2.26** "Member" means a Person holding a membership in the Association.



**2.27** "Mortgage" means any mortgage or deed of trust or other instrument which encumbers any Unit or Lot, or an interest therein, as security for payment of a debt or obligation. "First Mortgage" means a mortgage or deed of trust which has priority over all other security interests in any Unit.

**2.28** "Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such Person under such Mortgage.

**2.29** "Owner" means any record owner, whether one or more Persons, of a fee simple title interest to any Unit or Lot. Owner does not include a Person having only a security interest or any other interest in a Unit solely as security for an obligation.

**2.30** "Person" means an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

**2.31** "Plat" means a survey recorded in the Garfield County Records, other than a Map, depicts any portion of the Property, as amended or supplemented in accordance with this Declaration.

**2.32** "Project" means the Association and the Property subject to this Declaration together with any and all Improvements that have been or may be constructed on the Property.

**2.33** "Property" or "Ranch" means the real property subject to this Declaration and described in Exhibits A and B.

**2.34** "Ranch Creek Lots" means the Lots added to the Ranch pursuant to the Supplemental Declaration.

**2.35** "Unit" means a physical portion of the Project which is designated for separate ownership or occupancy, not including a Lot. Each dwelling within a Condominium Building is a separate Unit. The Unit boundaries are the unfinished interior surfaces of the lowermost floor, the uppermost ceiling, and the perimeter walls. Each Unit includes the interior surface of any built-in fireplace, door, or window. The Common Elements that are within a Unit are not part of the Unit.

**2.36** "Water and Sewer Facilities" means all water rights and all facilities and easements in, on and through any part of the Ranch which comprise or are part of the systems for providing water or sewer service to any portion of the Property.

### **ARTICLE III**

#### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**3.1** **Membership.** Every Owner shall be a Member of the Association. There shall be only one membership per Unit or Lot, which shall be appurtenant to and may not be separated from Unit or Lot ownership.

**3.2 Transfer of Membership.** An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit or Lot and then only to the purchaser or Mortgagee of his Unit or Lot. Any attempt to make a prohibited transfer is void.

**3.3 Vote Allocations.**

a. Common Vote Allocations. Except for matters to be decided separately by one membership class pursuant to this Declaration, all Owners shall vote on (i) matters concerning or affecting all of the Units and Lots, and (ii) matters that cannot be reasonably categorized as affecting one membership class. One common vote is allocated to each Unit and Lot.

b. Membership Class Vote Allocations. Subject to Section 3.3(a) above, the Association shall have two membership classes:

i. "Unit Members" shall consist of Owners of Units within a Condominium Building. Unit Members shall vote on those matters that are reasonably categorized as only concerning or affecting the Units. One Unit Member vote shall be allocated to each Unit.

ii. "Lot Members" shall consist of the Owners of Lots. Lot Members shall vote on those matters that are reasonably categorized as only concerning or affecting the Lots. One Lot Member vote shall be allocated to each Lot.

c. Determination of Common or Membership Class Vote. With respect to any matter to be decided by an Owner vote, the Board of Directors shall reasonably determine whether the matter concerns or affects all Units and Lots, or only one of the membership classes, in the Board's sole subjective discretion.

d. Joint Owners. When more than one Person, owns a Unit or Lot, all such Persons shall be Members. The vote allocated to such Unit or Lot shall be exercised by the Owners thereof as provided in the Bylaws.

e. Cumulative Voting. In any election of Directors, every Member entitled to vote shall have the right to cumulate their votes and give one candidate, or divide among any number of the candidates, all of that Member's votes multiplied by the number of Directors to be elected. Except for Director elections, cumulative voting is prohibited.

**3.4 Compliance with Governing Documents.** Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Governing Documents. The obligations, burdens and benefits of Association membership concern the land and shall be covenants running with each Unit and Lot for the benefit of all other Units and Lots.

**Commented [WEA1]:** The intent is to clarify the decision making process that may currently occur, but which is not expressly provided for in the current Declaration. In summary, with respect to matters that require Owner approval:

1. All Owners will be entitled to vote on matters that effect all of the Units and Lots;
2. Only Unit Owners will be entitled to vote on matters effecting the Condominium Buildings; and
3. Only Lot Owners will be entitled to vote on matters effecting the Lots.

**3.5 Books and Records.** The Association shall make available for inspection, upon advance request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements prepared pursuant to the Bylaws. The Association may recover expenses and charge reasonable fees for copying or delivering such materials, subject to applicable law.

**3.6 Description of Units or Lots for Purposes of Conveyance; Presumptions.** Any contract, deed, lease, mortgage, deed of trust, Will or any other instrument may legally describe a Unit or Lot as follows:

**a.** A Unit may be described by number and letter or letters as shown and with further reference to the applicable Map recorded in Garfield County Colorado and the Declaration. A legal description of a Unit may, for example, be in the following form:

Condominium Unit \_\_\_\_\_, Ranch at Roaring Fork  
Condominiums, Garfield County, Colorado.

**Commented [WEA2]:** To be revised, corrected, prior to owner review and comment

**b.** A Lot may be described by its identifying number shown on the applicable Plat recorded in Garfield County Colorado and the Declaration. A legal description of a Lot may, for example, be in the following form:

Lot \_\_\_\_\_, Ranch at Roaring Fork,  
Filing No. \_\_\_\_\_, Garfield County, Colorado

**c.** Each such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise effect not only the Unit or Lot but also the interest, right or easement, if any, in the ~~General~~ Common Elements and any appurtenant Limited Common Elements.

**d.** Each such description shall be construed to include:

**i.** A perpetual, non-exclusive easement for ingress and egress to and from an Owner's Unit or Lot on, over and across any private street or Common Element, and the use of any appurtenant Limited Common Elements.

**ii.** The entire Unit or Lot including all applicable or appurtenant obligations, liens, charges, covenants, conditions, restrictions and reservations.

**e.** Unless otherwise expressly stated in any instrument affecting title to a Unit or Lot, any transfer or conveyance of a Unit or Lot shall be presumed to transfer or convey the entire Unit or Lot.

**3.7 Inseverability of Units and Lots.**

**a.** Each Unit together with the appurtenant Limited Common Elements shall together comprise one Unit, which shall be inseparable and may be conveyed, leased, devised, or encumbered only as one Unit. Any violation or attempted violation of this provision shall be void

and of no effect. Nothing contained herein shall be construed to preclude the creation of a co-tenancy in the ownership of a Unit.

b. Each Lot together with the appurtenant interest or right in the Common Elements shall together comprise one Lot, which interests shall be inseparable and may be conveyed, leased, devised, or encumbered only as one Lot. Any violation or attempted violation of this provision shall be void and of no effect. Nothing contained herein shall be construed to preclude the creation of a co-tenancy in the ownership of a Lot.

**3.8 Separate Assessment and Taxation of Units Notice to Assessor.** Each Unit and the related interest, right and easement in the appurtenant Common Elements shall be considered a parcel of real property and subject to separate assessment and taxation. To the extent required or permitted by law, any lien for taxes assessed to any Owner or to the Association in accordance with the provisions of this Section shall be confined to such Owner's Unit or Lot. No forfeiture or sale of any Unit or of the interest of the Association for delinquent taxes, assessments, or charges shall divert or in any way affect the title of other Units in the project.

**3.9 Termination of Mechanic's Lien Rights and Indemnification.** No labor performed or materials or services furnished and incorporated in a Unit or Lot with the consent or at the request of the Owner or his agent or his contractor or subcontractor shall be the basis for the filing of lien against any other Unit or Lot. Each Owner shall indemnify and hold harmless the other Owners and the Association from and against all liability arising from the claim of any lien against such Owner's Unit or Lot for construction performed or for labor, materials, services or other products incorporated in such Unit or Lot at the Owner's request. The Association may enforce such indemnity by collecting from the Owner of the Unit or Lot on which the labor was performed and materials furnished the amount necessary to discharge any such mechanic's lien, and all costs, incidental thereto, including attorney's fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments for the purpose of discharging such lien. The provisions herein are subject to the rights of the Board of Directors for labor performed or materials or services furnished for the Common Elements duly authorized by the Association. The express consent of an Owner of any Unit for the furnishing of labor, materials or services with respect to the Unit shall be deemed to have been given in the case of emergency repairs thereto.

#### **ARTICLE IV**

#### **DUTIES AND POWERS OF THE ASSOCIATION**

**4.1. Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

**4.2 Duties of the Association.** The Association is the entity responsible for management, maintenance, operation, and control of the Property and the Association and it is the

primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Colorado law. The Association's duties include, without limitation, the following:

a. To accept and exercise jurisdiction over the Property and the Common Recreation Reserve, including (1) real property and improvements, if any, which are not Common Elements, (2) the water rights and water and sewer facilities described in Article VI hereof, and (3) any easements for operation and maintenance of the water and sewer systems provided over any portion of the Ranch, (4) any easements for other operation and maintenance purposes over the Ranch, and (5) any easements within the Property that benefit the Owners. For purposes of this section, a non-exclusive easement, license or other contractual right to use in favor of the Owners and their Guests shall not be deemed a lien or encumbrance. The Association shall operate and maintain in good order and repair all of such property and any Improvements thereon or related thereto which may be conveyed to the Association.

b. The Association shall pay all real property taxes and assessments levied upon any property conveyed, leased or otherwise transferred to the Association, to the extent not assessed to the owners thereof. The Association may contest or compromise such taxes and assessments; provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

c. The Association shall pay for water, sewer, garbage, electrical, telephone, gas, maintenance, snow removal and gardening service, and other necessary utilities or other services for the Association properties and paint, maintain, provide snow removal services for such Association properties and all Improvements thereto.

d. The Association may acquire for the use and benefit of all Members, real, tangible or intangible personal property and may dispose of the same by sale or otherwise as provided for herein, and the beneficial interest in any such property shall be owned by the Association. ~~the Members and their interest therein shall not be transferable except the interest of a Member who is a Unit Owner shall be deemed to be transferred upon the transfer of the Member's Unit~~ However, no such acquisition or sale of any real property shall be effective unless approved by 67% of all Owners.

e. The Association shall maintain and otherwise manage, or cause to be managed, in a neat and orderly condition, all of the Common Elements, except those portions of the Limited Common Elements required to be maintained by the Owner having the exclusive use thereof. However, the Association shall be responsible for major repair or replacement of the Limited Common Elements, and all related Improvements or facilities. Additionally, the Association shall maintain all Common Element landscaping of every kind and character, including shrubs, trees, grass and other plantings in a neat and orderly condition and in a manner to enhance its appearance and the exterior maintenance of all Condominium Buildings and other structures provided herein.

f. The Association shall maintain the exteriors of all Condominium Buildings and other structures within any Condominium Parcel ~~(including the balconies of Condominium~~

**Commented [WEA3]:** Revised to remove language applicable to condominium ownership.

~~Buildings notwithstanding anything contained in this Declaration to the contrary~~) in the Project, ~~except residences or other improvements on any Lot~~, in good condition and repair and in a manner to enhance their appearance, including without limitation, painting, and repair and replacement of roofs, gutters, downspouts, exterior doors and windows, glass surfaces and other exterior Condominium Building surfaces.

g. Other Activities. ~~The Association may~~ undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners on a self-supporting, special assessment or common assessment basis. Such activities and services may include security guards or security services, the providing of firewood, the providing of maid and cleaning service for individual Units, and the providing of check-in, mail and telephone answering service.

h. Rule Making. ~~The Association may~~ make, establish, promulgate, amend and repeal policy, procedure, rules and regulations in accordance with the responsible governance policies adopted pursuant to C.R.S. § 38-33.3-209.5(1)(b)(VII). Copies of the currently effective Governing Documents shall be available to all Owners upon request or by posting on the Association's website.

i. Audit Financial Statements. The Board shall provide for an annual report of the Association's accounts by making available for inspection at the Association's office the annual financial statement of the Association and shall make a copy of such financial statement available to each Owner within 30 days after completion thereof.

j. Water and Sewer Systems. The Association shall provide water and sewer services to each Unit, Lot, Common Element, and the Homestead Parcel in accordance with the provisions of Article VI. The Association may delegate this duty to a governmental or quasi-governmental entity subject to any requirements, limitations or restrictions set forth in this Declaration or by applicable law.

k. Other. To carry out the duties of the Association set forth in this Declaration, the Articles and Bylaws and under applicable law.

**4.3 Powers and Authority of the Association.** The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under applicable law, as limited or supplemented by the Governing Documents, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the Association's express or implied powers. Without in any way limiting the generality of any of the foregoing, the Association shall have the following powers and authority:

a. Assessments. To levy assessments on, and to enforce payment of such assessments in accordance with Article VII.

b. Enforcement of Restrictions. To perform such other acts, whether or not expressly authorized by the Declaration as may be reasonably necessary to enforce any of the provisions of the Declaration.

c. Manager. To retain and pay for the services of a person or firm to manage its affairs (the "Manager") to the extent deemed advisable by the Board, as well as such other personnel the Board determines to be necessary or proper for the Association's administration, management, or operation. Subject to limitations under the Act, the the Board may delegate duties, powers or functions to the Manager, provided that any such delegation shall be revocable upon notice to the Manager. The Directors shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function as delegated.

d. Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper for the Association's administration, management, or operation.

e. Easements and Rights-Of-Way. To grant and convey to any person easements, or rights-of-way, ~~parcels or strips of land,~~ in, on, over or under any Association Property for the purpose of compromising property or boundary disputes or for constructing, erecting, operating or maintaining thereon, therein and thereunder, (1) roads, streets, walks, driveways, parkways, and park areas, (2) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes (3) sewers, storms water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and (4) any similar public or quasi-public improvements or facilities.

f. Construction on Association Property. The Association may construct new Improvements or demolish existing Improvements. However, if any Improvement, addition or demolition (other than maintenance, repair or replacement of an existing Improvement) involving a total expenditure in excess of an amount equal to five times the amount of one pro-rata share of the Annual Assessment of Operating Expenses allocated equally to all Units and Lots according to Article VII § 7.5(a) pursuant to the annual budget applicable during the previous year, then the prior approval of a majority of a quorum of Members must be obtained.

g. Delegation of Duties. The Board may delegate its duties to Committees established pursuant to the Bylaws.

**4.4 Attorney-In-Fact.** The Association is hereby irrevocably appointed attorney-in-fact for the Owners to manage, control and deal with Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder. More particularly, the Association, as attorney-in-fact, shall be empowered to grant easements in, over, across and through the Common Elements for the purposes set forth herein, to dedicate or convey portions of the Common Elements such as the private streets and walkways to a public or quasi-public entity upon Owner approval, to deal with the Project upon its destruction, condemnation, obsolescence or termination as herein provided in Article IX, to execute any Declaration, Map or Plat amendment or any similar such instrument. The acceptance by any Person of any interest in any Unit or Lot shall constitute an appointment of the Association as an attorney-in-fact as provided above.

#### **4.5 Board of Directors Powers, Limitations.**



**a. Powers.** The Board of Directors shall have power to take the following actions:

**i.** Adopt and publish rules and regulations governing the use of the Common Elements and governing the personal conduct of the Members and their Guests on the Project; and may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

**ii.** Suspend a Member's voting rights during any period in which such Member is in default on payment of any Assessment. Such rights may also be suspended after notice and hearing for a period up to 90 days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to 90 days thereafter;

**iii.** Exercise all powers, duties, and authority vested in or delegated to the Board and not reserved to the Members by other provisions of this Declaration or the Articles or Bylaws or as provided by the Act; and

**iv.** Assign its right to future income, in whole or in part, including the right to receive Common Expense Assessments.

**b. Limitations.** Pursuant to C.R.S. § 38-33.3-303(3)(a), the Board may not act on the Association's behalf to amend the declaration, terminate the common interest community, elect Directors or determine the qualifications, powers and duties, or terms of office of Directors.

**4.6 Indemnification of Officers, Directors and Others.** Subject to Colorado law, the Association shall indemnify every officer, Director, and committee member against all damages and expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then serving Board) to which they may be a party by reason of being or having been an officer, Director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

**a.** The officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or Directors may also be Members).

**b.** The Association shall indemnify and forever hold each such officer, Director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled.



The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**4.7 Merger or Consolidation.** Upon a merger or consolidation of the Association with another association as provided by law, any real property owned by the Association and the rights and obligations of the Association may be transferred to the surviving or consolidated association, or another association may be added to any real property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Project, together with the covenants, conditions and restrictions established upon any other property, as one general plan and scheme.

#### **ARTICLE V**

#### **EASEMENTS, RESTRICTIVE COVENANTS AND RESERVATIONS**

**5.1 Recorded Easements and Encumbrances.** The Property is subject to all easements, licenses and other encumbrances as shown on any recorded plat affecting the Property, or created or permitted by this Declaration, and any other easements or licenses of record or of use as of the date this Declaration is recorded. The recording data for all presently recorded easements, licenses or encumbrances affecting the Property are set forth on Exhibit #.

**Commented [WEA4]:** This Exhibit will be based on Ranch Title Commitment, Schedule II(b) Exceptions (all after standard exceptions).

**5.2 Owners Acknowledgment.** All Owners and Guests are given notice that use of their Unit or Lot is limited by the Governing Document provisions as they may be amended, expanded and otherwise. Each Owner shall be entitled to the exclusive ownership and possession of his Unit or Lot. Each Owner may use the Limited Common Elements appurtenant to their Unit or Lot in accordance with the purpose for which they are intended without interfering or encroaching upon the lawful rights of the other Owners.

**5.3 Use of Common Elements.** All Owners shall have a non-exclusive easement for use of the Common Element sidewalks, pathways, roads, areas provided for community recreation, the Common Recreation Reserve, utilities, green areas and streets located within the Project, and each such Owner may make such use without hindering or encroaching upon the lawful rights of the other Owners.

**5.4 Non-Partitionability of Common Elements.** The Common Elements shall be owned in common by the Association and or all of the Owners and shall remain undivided and no Owner shall bring any action for a partition or a division thereof.

**5.5 Easement for Encroachments.** If any of the Common Elements encroach upon any Unit or Lot, a valid easement for the encroachment and for the maintenance of the same shall and does exist so long as it stands. If any portion of a Unit or Lot encroaches upon the Common Elements or upon an adjoining Unit or Lot, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either upon the Common Elements or Units or Lots.

**5.6 Access for Maintenance, Repair and Emergencies.** The Association shall have the irrevocable right to access each Unit or Lot from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Lot at any time. Furthermore, the Association shall have the irrevocable right to access each Unit or Lot from time to time during reasonable hours as may be necessary to shut off and to discontinue water service to any Unit or Lot delinquent in payment of regular monthly assessments. The Association shall repair damage to any part of a Unit or Lot resulting from such maintenance, repair, or replacement of any of the Common Elements or as a result of such emergency repairs within another Unit or Lot. The Association's expenses incurred to perform such work shall be a Common Expense which shall be assessed and collected as provided in this Declaration. However, if any such damage is caused by the act or omission of an Owner or their Guest, then such Owner shall be responsible and liable for all of the expenses incurred as a result of such damage. All damaged Improvements shall be restored substantially to the same condition in which they existed prior to the damage..

**5.7 Easements and Rights of the Association.** The rights and easements of enjoyment of Owners and Guests shall be subject to the following provisions:

a. The Association's right to limit the number of Guests that each Owner may invite to use the Common Elements at any one time.

b. The Association's right to establish uniform rules and regulations pertaining to the use of the Common Elements and the recreational facilities thereon.

c. The right of the Association to charge Members and non-members reasonable admission and other fees for the use of the fishing amenities (ponds, streams, and river), boarding horses, and use of the vehicle storage facilities. Use fees shall be determined by the Board and different charges may apply to Members, non-members, and Guests.

d. The Association's right to take such steps as are reasonably necessary to protect and maintain the Project.

e. The Association's right to suspend the enjoyment rights of any Member, or his Guests, for any period during which any Assessment remains unpaid, and for such periods set forth in duly adopted policies, rules or regulations for any infraction of the Governing Documents.

f. The Association's right to dedicate or transfer all or any part of the Common Elements or to grant easements, licenses or the like to any public agency, authority or utility or to grant licenses to any private homeowner association or any private club (on a membership fee basis), ~~whether incorporated or unincorporated, for such purposes and subject to such conditions as may be agreed to by the Members. However, the Association shall not sell or transfer its ownership interest in the Common Elements shall be effective unless without~~ approved of by 67% of all Owners and ~~by~~ unanimous approval of all Mortgagees holding any recorded first lien mortgage or first lien deed of trust covering or affecting all Units and Lots.

Commented [WEA5]: Revised Per First Declaration Amendment

g. The Association shall have a non-exclusive right and easement to use and access the Common Elements, Units and Lots as may be necessary or appropriate for the performance of its duties and functions which it is obligated or permitted to perform under this Declaration.

h. The Association shall exercise its right of access during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements, or for making emergency repairs necessary to prevent damage to the Common Elements, or for access to water taps for the purpose of discontinuance of service, or to another Unit or Lot as set forth in Section 5.6 above.

#### 5.8 Association Reservations, Easements and Other Rights.

a. The Association shall have non-exclusive easements for use and access in, across, over and to the Common Elements and the Homestead Parcel, to access, use and enjoy the Common Elements, private and the public roads and streets; for utility service, installation, repair and maintenance of utilities, including water, gas, electricity and the like; and for storm, sanitary and drainage sewers, telephone and telephone lines, pipes and conduits and for access to all meters and connections relating to said installations.

b. The Association shall have an easement and right to use and access the Common Elements for the purpose of constructing Improvements, and for maintenance, repair, emergency repair or replacement of any of the Common Elements, and any Improvements therein as the Board of Directors may deem advisable in its sole and absolute discretion.

#### 5.9 Common Recreation Reserve Covenants and Restrictions

Notwithstanding any conflict in the Association Documents, use of the CRR is subject to the following:

a. Classification; Use. The Common Recreation Reserve is a Common Element recreational area and shall be preserved and maintained in its natural state as a scenic natural forested or natural open area, except as herein stated, and shall be used only for recreational purposes of a resort-type variety such as (by way of illustration and not of limitation) fishing, boating, canoeing, hiking, riding, bicycling, swimming, golf, tennis, or similar activities. Except that portions of the Common Recreation Reserve may be developed for nonprofit recreation and leisure-time activities of the variety described above, which development may include the construction of Improvements including, without limitation, swimming pools, golf courses, tennis courts, riding stables and bicycle riding and hiking trails, together with such structures as may be necessary or appropriate to the maintenance of such facilities or related equipment.

b. Right of Access. Pursuant to the provisions of this Declaration, the Common Recreation Reserve shall be maintained and held for the exclusive use of the Owners of Units or Lots; and (the owners of the Homestead Parcel. Guests of Owners, and invitees or guests of the Homestead Parcel Owners, shall not use the Common Recreation Reserve without obtaining prior approval from the Association in accordance with rules and regulations on use of the Common Recreation Reserve that the Board may adopt.

Commented [WEA6]: Provisions are from the CRR Declaration

c. Regulation by the Association. The Association may promulgate such reasonable rules and regulations and perform such other acts related to governing the use of the CRR and the recreational facilities constructed thereon as authorized in this Declaration or as necessary or desirable to the enhancement of enjoyment and safety of Persons using such facilities.

d. Easement Across Common Recreation Reserve. The Common Recreation Reserve is subject to a non-exclusive easement as may be necessary or desirable to provide or improve access to or from the Ranch, or any part thereof, and for installation, maintenance or improvement of or to below-surface utilities as may be necessary or desirable to enhance the use and enjoyment of the Property.

**5.10 Use Restrictions and Covenants Applicable to all Units and Lots.** Use of Units or Lots is subject to the following covenants and restrictions:

a. Residential Use. The use of each Unit or Lot is restricted to residential purposes as defined in the Garfield County Land Use and Development Code. No industry, business, trade, or commercial activities (other than home professional pursuits without employees, or nonresidential storage, mail, or other nonresidential use) shall be conducted, maintained, or permitted in any part of a Unit or Lot, nor shall any Unit or Lot be used or rented for transient, hotel, or motel purposes. Any activity that causes excessive vehicular traffic, includes material processing, finishing or parts assembly, is prohibited. No boat, truck, trailer, camper or recreational vehicle shall be used as a living area within the Project, unless the Board's prior written approval is obtained.

b. Subdivision. Lots or Units may be subdivided into two or more Units or Lots, or the boundary lines of any Unit or Lot altered, pursuant to requirements in this Declaration and applicable law, and only with the Board's prior written consent. Without limiting the generality of the forgoing, Owners must comply with requirements set forth in C.R.S. §§ 38-33.3-212, 213 and 217, at their own expense.

b.c. Leasing. The term "lease," as used herein, shall include any agreement for the lease or rental of a Unit or Lot and shall specifically include, without limitation, term or month to month rental. Owners shall have the right to lease their Units or Lots only under the following conditions:

i. No Owner may lease less than its entire Unit or Lot without obtaining prior approval from the Association in accordance with rules and regulations that the Board may adopt.

ii. All leases shall be in writing and otherwise comply with applicable law. Any Owner who leases their Unit or Lot shall forward a copy of the lease to the Association within 10 days after the execution by Owner and the tenant.

iii. All leases shall provide that the lease terms and the tenant's occupancy of the Unit or Lot is subject to the Governing Documents, as the same may be amended

**Commented [WEA7]:** Prior language has been substantially revised. Much of the changes are intended to modernize and clarify without altering the purpose or intent of the existing provisions.

from time to time, and that the tenant's failure to comply with the Governing Documents, in any respect, shall be a default of the lease, which may be enforced by the Board, the Owner, or both.

**iv.** The short-term (a lease term of 30 days or less) rental of any Unit or Lot shall be subject to restrictions of applicable law. Prior to commencement of any short-term rental activity or occupancy, Owners shall provide the Board of Directors with a copy of their written rental management agreement, and any letter evidencing the governmental approval that may be required pursuant to applicable law, within 10 days after the execution by the Owner and the rental manager.

**e.d.** Timeshare Restriction. No Owner shall offer or sell any interest in their Unit or Lot under a "timesharing" or "interval ownership" plan, or any similar plan without the Board of Director's specific prior written approval in their absolute discretion, and subject to applicable law.

**d.e.** Nuisances. Any use, activity, or practice, which is the source of disturbance to or unreasonably interferes with the peaceful enjoyment or possession of a Unit or Lot or any portion of the Property, is prohibited as a nuisance. Activities prohibited under this subsection include, without limitation, the following: noxious, offensive, dangerous, or unsafe activity that is or may cause an unreasonable embarrassment, disturbance, or annoyance to other Owners or Guests; activity that causes noxious or offensive sounds or odors, including those caused by pets.

**e.f.** Parking. Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, snowmobiles, campers, trailers, stored vehicles, abandoned or inoperable vehicles in places other than enclosed garages or within the exterior parking spaces depicted on a Lot's approved site plan, or within a Common Element parking area, is prohibited, except as approved by the Board. An "abandoned or inoperable vehicle" means any vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer. Garages shall be used for parking vehicles and storage purposes only and shall be not converted for living or recreational activities.

**f.g.** Temporary Buildings. No shed, tent or other temporary building shall be erected, maintained or used within the Project; provided, however, that temporary buildings incidental to the initial construction of Improvements on any portion of the Project may be constructed and maintained provided that such temporary building shall be promptly removed upon the completion of such construction work.

**g.h.** Immoral, Improper or Offensive Use. No immoral, improper, offensive or unlawful use shall be permitted or made within the Project. All Owners and Guests shall comply with applicable laws, ordinances, and regulations and other governmental or quasi-governmental regulations with respect to all or any portion of the Property. Further, no Owner shall dispose or allow any person under the Owner's control or direction to release, discharge or emit on the Property or dispose of any material on the Property that may be unsafe to any person

or property, or that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

~~h.i.~~ i.i. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept within any Unit or Lot without the Association's prior approval. Domestic dogs, cats, or other household pets may be kept, subject to the rules and regulations that the Board may adopt or amend from time to time. Domestic dogs, cats or other household pets shall not be kept, bred or raised within any Unit or Lot for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall limit the number of dogs, cats and birds to two each. The Association may regulate or prohibit animals that the Board of Directors determine to be a nuisance to any Owner or Guest. Dogs shall be kept on a leash at all times when they are outside of any Unit or Lot, except that dogs may be off leash within the CRR if under voice control. Dogs left unattended on any Lot shall be leashed, chained, fenced, "electric fenced", kenneled, or housed at all times. Location of kennels and fencing, and fencing materials, shall be subject to Association approval.

~~h.j.~~ i.j. Signs. Except for signs advertising a property for sale and colored black and white having a maximum face area of three square feet or other appropriate realtors' signs, no commercial advertising sign or other advertising device of any character shall be erected, maintained or displayed upon any portion of the Project by an Owner. However, the Association may erect and maintain such signs and advertising devices or structures as it may deem necessary or proper in connection with the Project. The Association may establish reasonable, content-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors.

~~h.k.~~ i.k. Landscaping. Owners shall not landscape or garden outside of their Lot or the Limited Common Element area appurtenant to their Lot or Unit. Except as permitted in the rules and regulations, Owners shall not construct, install, or substantially alter the appearance of any landscaping, fences, hedges, trees, walls, or other exterior structures anywhere on the Property without the Association's prior written approval.

~~h.l.~~ i.l. Alterations and Additions. Owners shall not make any alterations to their Unit that may affect the Common Elements or another Unit without the Association's prior written consent. Owners shall not construct any Improvements within their Lot nor make any additions, alterations or modifications to the exterior of any residences, Condominium Buildings or Improvements, nor add, alter, modify or remove fences, hedges, trees, walls or other structures without obtaining the Association's prior written consent.

~~h.m.~~ i.m. Activities Affecting Insurance. Any use, activity, or practice, which may directly or indirectly result in the cancellation of any insurance policy obtained and maintained by the Association, or which may increase the premium applicable to any such insurance policy, is prohibited on any portion of the Property.

~~h.n.~~ i.n. Maintenance of Units and Lots.



i. Each Owner shall maintain their Unit or Lot in good repair, appearance and sanitary condition.

ii. Owners shall have the exclusive right to paint and paper and otherwise decorate the interiors of their Unit so long as no alteration of any permanent installation or structure within said Unit occurs. For the purposes of this paragraph, an Owner shall be deemed to own the interior non-supporting walls and interior non-supporting floors and ceilings of any Unit, the materials (such as, but not limited to, plaster, chips and drywall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including subflooring) making up the finished surfaces of the perimeter and supporting walls, ceilings and floors in a Unit and the interior surfaces of doors and windows ~~in the Limited Common Elements~~ appurtenant to the same Unit. The Owner shall not be deemed to own lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as utilities) running through his Unit which serve one or more other Unit or at the point of tap except as a tenant in common with the other Owners. Such utilities shall not be disturbed or relocated by an Owner without prior written consent and approval of the Board. Such right to repair, alter and remodel shall carry the obligation to replace any finishing or other materials with similar or other types or kinds of materials of at least the same quality. An Owner shall maintain and keep and repair the interior of their Unit, including the fixtures and personal property therein. Unit Owners shall be responsible for maintenance and repair, at their own expense, of all utilities and related fixtures and equipment installed within and exclusively serving a Unit, commencing where the utilities enter the Unit. Unit Owners shall do no act nor any work that will impair the Condominium Building's structural integrity, mechanical systems, or any related easement or hereditament.

iii. Owners shall keep the Limited Common Elements appurtenant to their Unit or Lot in a clean and sanitary condition, and that Owner shall not alter the "as built" condition of the Limited Common Elements without the prior written consent and approval of the Association.

~~h.o.~~ Damages; Liability. An Owner shall be liable for any damage to the Common Elements, any Unit or Lot, or any Improvements within the Property that arises from the acts or omissions of that Owner or their Guests together with any resulting expense that may be incurred to repair such damage. Any expense that the Association incurs due to such damage including, without limitation, repair expenses, attorneys' fees and costs may be assessed exclusively to that Owner at the sole discretion of the Board.

~~o.p.~~ Mineral Extraction. No property within the Project shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance (except incident to construction as herein contemplated) or other minerals of any kind. This restriction shall in no way limit the right of the Association or the Owners to remove, transport, receive or otherwise supply water to the Owners and the Association as provided for in the Declaration. No machinery or equipment of any kind shall be placed, operated or maintained upon the Project except such machinery or equipment as is usual and customary in connection with the construction, use and maintenance of the Project.

~~p.g.~~ Rules and Regulations. The Board of Directors may adopt rules and regulations concerning and governing the use of the Common Elements, or any portion of the Project.

**5.11 Use Restrictions and Covenants Applicable to the Ranch Creek Lots.** In addition to the covenants, conditions and restrictions applicable to all Units and Lots, Ranch Creek Lots are subject to the following:

a. Air Quality Restrictions. In order to protect against the degradation which occurs to air quality as a result of the utilization of wood-burning devices, the following restrictions are imposed:

i. No open hearth solid fuel fireplaces will be allowed anywhere within any new dwelling units located within Ranch Creek.

ii. All dwelling units within Ranch Creek will be allowed an unrestricted number of natural gas burning fireplaces or appliances.

iii. All dwelling units within Ranch Creek will be allowed one (1) new wood-burning stove as defined by C.R.S. § 25-7-401 et. seq. and all the regulations promulgated thereunder.

b. No On-Street Parking. The north side of Ranch Creek Lane is a designated fire lane and shall be marked as such with appropriate "no parking" or other signage. No motor vehicle of any kind, and no boat, trailer, camper, motorcycle, snowmobile, or any other such item shall be parked or stored at any time upon or within such fire lane. ~~In the event a motor vehicle or other item described above is parked in violation of this paragraph, the Ranch Creek Association shall have the right to levy an assessment against the Owner of the offending vehicle or other item in an amount not less than \$20.00 nor more than \$50.00 for the first violation, with the ability to increase the maximum amount of the assessment to no more than \$500.00 in the case of repeated violations. Notice of the assessment may be delivered by leaving a copy thereof upon the offending vehicle or other item. Each twenty-four hour period that a vehicle or other item remains in violation of this provision shall constitute a separate offense, subject to a separate assessment. The Ranch Creek Association shall have the right to have vehicles or other items parked in the fire lane in violation of this section towed and stored if parked for longer than twenty-four (24) hours. All tow fees, storage fees, or any other fees associated with such towing shall be the responsibility of the Owner of the offending vehicle. All assessments levied for parking violations and towing/storage fees under this paragraph may be collected and enforced in accordance with the provisions of Article 7 hereof.~~ Owners of Lots within Ranch Creek shall have the right, subject to applicable provisions of this Declaration, to park and store boats, campers, trailers, etc. in the vehicle storage compound designated for such use by the Association. Lot 13 and Parcel A shall not be used for such purpose.

c. Ranch Creek Plat. The Ranch Creek Lots are also subject to use Restrictions set forth in the Ranch Creek Plat.

**Commented [WEA8]:** Provisions from Ranch Creek Declaration, as amended, and the Ranch Creek Plat.

Board may consider whether any are already applicable to all Units or Lots or should be applicable to all Units and Lots.

**Commented [WEA9]:** To be addressed in Rules and Regs



**5.12 Delegation of Use.** Owners ~~shall not authorize,~~ delegate ~~or assign~~ their right to use and enjoy the Common Elements and ~~related Improvements and~~ facilities to ~~their~~ Guests, ~~without complying with all applicable rules and regulations that the Board may adopt.~~

## **ARTICLE VI**

### **WATER AND SEWER SERVICE**

**6.1 Common Elements.** Without limiting the generality of this Declaration with respect to Common Elements, the terms of this Article shall apply specifically to water rights and to facilities which comprise any parts of systems for providing water or sewer service. The other provisions of the Declaration shall also apply to such water rights and facilities except where the terms of this Article are clearly inconsistent therewith, in which event the terms of this Article shall control.

**6.2 Acquisition and Management of Water Rights.** Subject to the provisions of this Article VI, the Association may initiate, acquire, hold, manage, protect and develop water rights for the purposes set forth in this Declaration. The Association shall hold title to all such water rights for the benefit of the Members, and may take such actions with respect to water rights, subject to any approval required by this Declaration for the financing of such actions, as the Board determines will benefit such Members; including without limitation the creation of new water rights, the exercise of diligence with respect to legal or administrative action to protect or improve such water rights, participation in exchange programs or plans of augmentation. The Association may accept the gift or conveyance of water rights; provided that the Association shall not purchase, release, ~~encumber~~ or convey any water right except upon the affirmative vote or written consent of 67% of all votes in the Association.

**6.3 Acquisition and Management of Water and Sewer Service Facilities.** Subject to the provisions of the Declaration, the Association may acquire, construct, repair, replace, operate and maintain facilities for the provision of water and sewer service to those entitled thereto under the terms of the Declaration. The Association shall hold title to any such facilities for the benefit of the Members and subject to any approval required by such actions as the Board, by majority vote or written consent, determines will benefit such Members. Without limiting the foregoing, the Association, upon majority vote by the Board may utilize a Manager to operate and maintain such facilities and to provide water and sewer service.

**6.4 Initial Water Rights and Water and Sewer Service Facilities.** The water rights and water and sewer service facilities described in the Deed to the Association, dated July 3, 1973 and recorded in Book 447 at Page 140 of Garfield County Records (the "Water Deed"), have been conveyed to the Association for the benefit of the Owners pursuant to this Declaration together with the power to revest rights and interests if unused as set forth in Paragraph 3 of the Water Deed.

**6.5 Water and Sewer Service.** Subject to compliance with the terms of the Declaration, the payment of assessments, charges and fees imposed pursuant to this Declaration, the payment of service fees where required by service contract authorized by this Declaration, and

compliance with reasonable rules and regulations by the Association through a majority vote of its Board, consistent with this Declaration, the Association shall provide water and sewer service:

- a.** To each Unit or Lot within the Project.
- b.** To the Common Recreation Reserve, including without limitation the provision of water for irrigation.
- c.** To authorized uses within the Ranch, but not included within the Project. Such uses shall be served pursuant to a service contract between the Association and the user, approved by majority vote of the Board. Any such service contract shall require the user to bear the cost of installing, maintaining and operating facilities to serve such uses, in the manner provided for the Homestead Parcel in subsection (d) below.
- d.** To the Homestead Parcel pursuant to a service contract or contracts with the Owners thereof approved by majority vote of the Board, but not exceeding the amount of water reserved for the Homestead Parcel (except when additional water is available and the Association agrees to enlarge its services) and not to exceed the capacity of the Association's water and sewer service facilities. Any such service contract shall require the Owner to bear and pay to the Association the marginal capital costs and expenses for the installation of facilities for such service and to pay a proportionate part of the costs of the facilities used in common with other service and a proportionate part of the costs of operating and maintaining sewer and water utility service to all land served by the Association, said proportions being reasonably determined by the Board of Directors in its sole discretion.
- e.** The Association shall not serve, nor hold itself out as serving or ready to serve all members of the public, nor take any action which would cause it to be classified as a public utility under the law of the State of Colorado.

**6.6 Allocation of Water.** The Association, by majority vote of the Board, may place restrictions upon its water service or require those served by it to curtail water use, when necessary in the judgment of the Board to provide or protect an adequate supply of water during times of shortage, provided, however, the Board shall limit or curtail non-domestic recreational purposes, prior to limiting or curtailing service for commercial purposes, and provided the Board shall recognize at all times the rights reserved in the Water Deed. The Board shall limit or curtail domestic service only in the event that the reasonable curtailment or limitation of other service is insufficient to provide an adequate supply of water in the judgment of the Board to serve domestic purposes and essential non-domestic uses. In addition to any other remedies available, the Board may discontinue water service to any Unit or Lot delinquent in payment of assessments.

**6.7 Financing.** In order to provide financing for the operation and maintenance of water and sewer facilities, the Association may utilize any means of raising funds authorized by this Declaration, including, but not limited to general and special assessments, assessment of marginal capital costs for maintenance, upkeep, expansion or addition to the facilities, and imposition of tap or hookup fees upon the Owners, developers or purchasers of Units or Lots within the Project or upon the Owners, developers or purchasers of residences elsewhere in the Ranch or

within ~~the or~~ the Homestead Parcel. Additionally, the Board may encumber the Association's lien and rights to collect assessments as security for a loan to the Association.

**6.8 Service by a Substitute Entity.** Upon the vote or written consent of ~~three-fourths~~ 67% of all votes in the Association of the Members entitled to vote and in compliance with any requirements imposed by law, the Association may convey some or all of its water rights and water and sewer service facilities to any municipality, water district, sanitary sewer district or other municipal or quasi-municipal corporation or any other entity or individual which will provide acceptable water and sewer service to those served by the Association and assumed the responsibilities of the Association pursuant to this Article, upon terms acceptable to the Association.

## **ARTICLE VII**

### **Covenant for Assessments**

#### **7.1 Obligation and Purpose of Assessments.**

a. Owners, by accepting a deed for a Unit or Lot, covenant to pay the Association (1) the Annual Assessments imposed by the Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Supplemental Assessments for the purpose of providing the additional funds required to meet unexpected increases in budgeted Common Expenses; (3) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; (4) Specific Assessments for Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element that may be assessed against the Unit or Lot to which such Limited Common Element is assigned, or Common Expenses incurred due to an Owners act or omission, as determined by the Board; and (5) Default Assessments including, without limitation, fines, attorneys' fees and costs incurred due to an Owner's violation of the Governing Documents, which may be assessed against said Owner's Unit or Lot. No Owner may exempt himself or herself from liability for Assessments by non-use of Common Elements, abandonment of his or her Unit or Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

b. The Assessments shall be used for Common Expenses incurred to promote the health, safety and welfare of the Owners and Guests, for the maintenance, repair, replacement or improvement of the Common Elements, and for any other purpose authorized by this Declaration or applicable law.

**7.2 Budget.** The Board of Directors shall adopt a budget with Assessments sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. Within 90 days after adoption of any proposed budget, the Board shall provide the budget to all the Owners with notice of a date for an Owner meeting to

**Commented [WEA10]:** Board may elect to remove this additional language, or revise to limit right to encumber to Property or lien and collection rights. I recommend that the Board retain the right to encumber lien and collection rights pursuant to Bylaws Sec. 7.1(k).

**Commented [WEA11]:** Art. IX §§ 9.2 and 9.8 conflict regarding the Owner approval necessary to convey water rights: § 9.2 requires majority approval; § 9.8 requires 75% approval.

Revised to require 67% approval for both .

**Commented [WEA12]:** This Article VII is a full re-write of Art. X of the current Declaration to incorporate defined terms, ownership classes, and lien right matters previously addressed in Art. XI. Revisions have also been made to ensure compliance with CCIOA and otherwise modernize these provisions.

consider ratification of the budget. The budget will be deemed approved by the Owners unless at that meeting a majority of all Owners vote to veto the budget. If the proposed budget is vetoed, the last approved periodic budget shall be continued until a subsequently proposed budget is not vetoed by the Owners.

**7.3 Working Capital Fund.** The Association shall require each buyer of a Unit or Lot to make a non-refundable payment to the Association in an amount equal to ~~one-quarter (1/4)~~ 50% of the Unit or Lot's Annual Assessment for that year, or 0.5% of the purchase price, whichever is larger. ~~The sum paid which sum~~ shall be segregated and held, ~~without interest,~~ by the Association to meet unforeseen expenditures, acquire additional services or equipment or as a maintenance reserve. A working capital fund contribution shall be collected and transferred to the Association at the time of closing of each sale, or re-sale, of each Unit or Lot, and shall be maintained for the Association's use and benefit. An Owner's contribution shall not relieve an Owner from paying Annual Assessments as they become due. Upon the transfer of a Unit or Lot, the selling Owner shall not be entitled to a credit from the transferee for any unused portion of the working capital fund.

**7.4 Annual Assessments.** Annual Assessments for Common Expenses shall be based upon the estimated cash requirements as the Board shall from time to time determine to be paid by all of the Owners. The Annual Assessments shall be due in advance, without notice on the first day of the year. Owners may pay their Annual Assessment in monthly installments, due on the first of each month, without notice, or such other installments as the Board may determine. The Association's failure to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

**7.5 Apportionment of Annual Assessments.** The apportionment of Annual Assessments for each Unit or Lot's appurtenant Common Expense liability is as set forth below.

a. ~~Ranch Expense~~ Operating Expenses. All Units and Lots shall be responsible for a share of the Common Expenses that are clearly or reasonably attributable to: the Common Recreation Reserve, the Water and Sewer Facilities, and to water and sewer service provided by the Association (that is not separately metered); the administration, management, and operation of the Association; cleaning, maintenance, repair or replacement of Common Elements, which are not clearly or reasonably allocable to a membership class or to any particular Owner(s). Each Unit or Lot shall be allocated a pro rata share of the Operating Expenses.

b. Unit Member Expenses. The Unit Owners shall be responsible for 100% of the "Unit Member Expenses" incurred for administration, operation, management, maintenance, repair or replacement of the Limited Common Elements located within a Condominium Parcel including, without limitation, any Buildings or other Improvements that are exclusively used and enjoyed by, or that exclusively benefit, the Units, and expenses declared to be Unit Member Expenses pursuant to this Declaration. Each Unit shall be allocated a pro rata share of the Unit Member Expenses.

**Commented [WEA13]:** Working Capital Fund contribution provisions are standard in similar communities throughout the state. It allows the Association to supplement its available funds without raising Assessments or levying a special assessment on existing Owners.

Working Capital provisions will have no effect on the amount of assessments to be paid by existing Owners, as the contribution will only be due from new Owners upon purchase. It is unlikely to have any measurable effect on future sales or purchase prices.

**Commented [WEA14]:** Revised based on Board comments and discussion with local realtor regarding reasonable amount of working capital to be paid at closing.

**Commented [WEA15]:** The intent of this Section is to expressly provide for allocation Common Expenses in same manner as they are currently allocated, despite the lack of sufficient language in the existing Declaration. To be clear, this should not result substantial changes to the division of Assessments between Lots and Units going forward.

**Commented [WEA16]:** As a practical matter, most of the Improvements within a Condominium Parcel will be LCE of the Units under the proposed form of ownership.

c. **Lot Member Expenses.** The Lot Owners shall be responsible for 100% of the "Lot Member Expenses" incurred for administration, operation, management, maintenance, repair or replacement of any Common Elements or related Improvements that are exclusively used and enjoyed by, or that exclusively benefit, the Lots, and expenses declared to be Lot Member Expenses pursuant to this Declaration. Each Lot shall be allocated a pro rata share of the Lot Member Expenses.

d. **Supplemental Assessments.** If the Board determines, at any time or from time to time, that the amount of the Annual Assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations, one or more supplemental assessments may be made to provide the additional funds. In which case, the Board shall adopt and ratify the revised budget pursuant to this Declaration. Upon request, the Board will deliver the revised budget summary to any Mortgagee. The Board may levy supplemental assessments for such fiscal year against each Unit and Lot based on the revised budget.

**7.6 Specific Assessments.** Common Expenses for maintenance, repair or replacement of a Limited Common Element benefitting one or more, but less than all, Units or Lots may be assessed against the Unit(s) or Lot(s) to which such Limited Common Element is assigned, or against the affected Unit(s) or Lot(s) as determined by the Board. Specific assessments may include, without limitation, any extraordinary insurance cost incurred as a result of the value of a particular Owner's Unit or Lot shall be borne by that Owner, and any extraordinary Common Expense related to the actions of any Owner, or their Guest, shall be assessed solely against such Owner's Unit or Lot.

**7.7 Special Assessments.** The Association may levy in any fiscal year one or more Special Assessments payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense but shall be construed to prescribe the manner of assessing expenses authorized in this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Each Unit or Lot shall be allocated a pro rata share of any amounts assessed pursuant to this Section. Written notice of the Special Assessment amount and payment schedule shall be given promptly to the Owners, and no payment shall be due less than 30 days after the date of such notice.

**7.8 Default Assessments.** All monetary fines assessed against an Owner pursuant to the Governing Documents, or any Association expense relating to the fine including, without limitation, attorneys' fees and costs incurred to enforce the Owner's violation of the Governing Documents, shall be a Default Assessment. Such a Default Assessment shall be a lien against such Owner's Unit or Lot which may be collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to that due date.

**7.9 Assessment Lien.**

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a. The Association is hereby granted, and shall have, a lien on a Unit or Lot for an Assessment levied against the Unit or Lot, or fines imposed against its Owner. Fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to the Act and the Governing Documents are enforceable as Assessments. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

b. A lien under this Section is prior to all other liens and encumbrances on a Unit or Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first security interest on the Unit or Lot recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit or Lot. A lien under this Section is also prior to all security interests described in subdivision (2) of this subsection to the extent that the Common Expense Assessments (not including fees, charges, late charges, attorneys' fees, fines, and interest pursuant to C.R.S. §§ 38-33.3-302(1)(j), (k), and (l), C.R.S. § 38-33.3-313(6), C.R.S. § 38-33.3-315(2), are based on the periodic budget adopted by the Association pursuant to this Declaration and would have become due in the absence of acceleration, during the six months immediately preceding an action or a non-judicial foreclosure either to enforce or extinguish either the Association's lien or a security interest described in subdivision (2) of this subsection. The Assessment lien shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. Transfer of any Unit or Lot shall not affect the Association's lien except that sale or transfer of any Unit or Lot pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units and Lots as a Common Expense at the direction of the Board.

c. Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a statement or claim of lien is within the Board's discretion but is not required.

d. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party, which shall be additional Assessments, and enforceable by execution under Colorado law.

e. The Association's lien may be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

f. In any action by the Association to collect Assessments or to foreclose a lien for Assessments, the court may appoint a receiver for the Unit or Lot who shall collect all sums due from that Unit or Lot Owner or a tenant of the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments based on a periodic budget adopted by the Association pursuant to this Declaration.



**7.10 Reserve Fund.** The Association shall establish and maintain one or more reserve funds for the repair or replacement of Improvements to the Common Elements and those Limited Common Elements that the Association is obligated to maintain. Each reserve fund shall be a line item in the periodic budget and shall be collected from and as part of the Annual Assessments.

**7.11 Effect of Nonpayment.**

a. Any Assessment, or an installment thereof, shall be delinquent if not paid within 30 days of its due date. If an Assessment, or installment, becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

i. Assess a late charge for each delinquency in such amount as the Board may determine.

ii. Assess interest on the delinquent amount at a rate the Board determines is appropriate, but not to exceed 21% per annum (Default Rate), subject to statutory limitation, accruing from the due date until paid in full;

iii. Suspend the Owner's voting rights or the right to use any Common Element during any period of delinquency;

iv. Accelerate any portion or all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be immediately due and payable;

v. Disconnect any utility services to the Unit or Lot that are paid as a Common Expense;

vi. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

vii. File a statement of lien with respect to the Unit or Lot and proceed with foreclosure as set forth below.

b. Upon payment of delinquent Assessments, the Association may forego any collections remedies, decelerate any Assessment installments that were accelerated and restore any rights to the previously delinquent Owner.

**7.12 Successor's Liability for Assessment.** In addition to each Owner's personal obligation to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to ownership of a Unit or Lot, except as otherwise provide in this Article, shall be jointly and severally liable with the prior Unit or Lot Owner(s) for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Unit or Lot without prejudice to such successor's right to recover from any prior Owner any amounts paid by such successor. The successor's liability shall not be personal and shall terminate upon termination of such

successor's ownership of the Unit or Lot. In addition, the successor shall be entitled to rely on the Association's statement of status of assessments as set forth below.

**7.13 Notice to Mortgagee.** The Association may report to any Mortgagee any unpaid Assessments remaining unpaid for longer than 60 days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Unit or Lot may pay any unpaid Assessment payable with respect to such Unit or Lot, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit or Lot for the amounts paid with the same priority as the lien of the Mortgage.

**7.14 Statement of Assessments.** The Association shall furnish to an Owner, their designee, or to a holder of a security interest upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit or Lot. A reasonable fee, established by the Board, may be charged for such statement, subject to applicable law.

## **ARTICLE VIII**

### **Insurance**

**8.1 Insurance Coverage Requirements.** The Association shall obtain and maintain at all times, as a Common Expense, insurance as required herein, including commercial general liability and property damage insurance in an amount to be determined by the Board, in the Board's sole discretion, provided that such coverage shall: be for at least \$1,000,000.00 for bodily injury, including deaths, and property damage arising out of a single occurrence; insure the Association, the Board, officers, all agents and employees of the Association, the Owners and their respective Mortgagees from liability in connection with the operation, maintenance, and use of the Common Elements; and include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to common interest communities similar to the Ranch in Colorado. Notwithstanding the forgoing, the Board shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at demonstrably unreasonable cost. If the Association fails to obtain any of the required insurance coverages due to lack of reasonable availability, the Board shall promptly deliver written notice of the fact to all Owners.

**Commented [WEA17]:** As revised per First Declaration Amendment.

The Association shall obtain and maintain in full force and effect physical damage insurance on all Units, (excluding, unless the Board directs otherwise, the fixtures, equipment, furniture, wall coverings, improvements, additions or other personal property installed by Owners) and all insurable Common Element Improvements within the Project, in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage). Such property insurance shall afford protection against loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard all-risk endorsement including but not limited



to sprinkler leakage, debris removal, demolition, vandalism, malicious mischief, windstorm, and water damage. Additionally, the property insurance shall cover all personal property owned by the Association. The Board shall have the right to increase the level of coverage under the Association's policy from the standard outlined herein by Board resolution. If the level of coverage is changed, the Association shall make such information available to all Owners by posting the information on the Association's website, if any, or by other written correspondence to the Owners.

All insurance purchased by the Association pursuant to this Article shall run to the benefit of the Association, the Board, officers, all agents, and employees of the Association, the Owners and their respective Mortgagees, and all other persons entitled to occupy a Unit or Lot as their interests may appear. The Association's insurance policy may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner shall have the right to obtain additional coverage at Owner's own expense.

**8.2 Insurance Provisions Common to All Insurance.** Any insurance coverage the Association obtains pursuant to this Article shall be subject to the following provisions and limitations:

a. The named insured under any such policies shall include the Association, as attorney-in-fact for the use and benefit of the Owners, or the Association's authorized representative (including any trustee, or any successor trustee, with whom the Association may enter into an insurance trust agreement, sometimes referred to as the "Insurance Trustee" and such Insurance Trustee will be recognized by an insurer providing insurance pursuant to this Article) who shall have exclusive authority to negotiate losses and receive payments under such policies, and the "loss payable" clause should designate the Association or the Insurance Trustee, if any, who will act as trustee for each Owner and the holder of each Mortgage.

Commented [WEA18]: Added for compliance with CRS 38-33.3-313(5).

a.b. Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association.

b.c. The insurer shall waive its rights of subrogation of any claims against the Association, the Board, the Manager, officers, all agents and employees of the Association, and any Owner or Guest, and shall waive any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

e.d. The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner or Guest when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control.

d.e. The policies shall include ordinance or law coverage, demolition cost coverage and increased cost of construction coverage.

e.f. Any "other insurance" clause contained in the master policy shall expressly exclude individual Owners' policies from its operation.

f.g. The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled nor may the insurer refuse to renew (including cancellation for non-payment of premium) without at least 30 days' written notice to the Association, each Owner and any First Mortgagee listed as an insured in the policies;

g.h. The Association's insurance policies shall be primary if there is other insurance in the name of the Owner that covers the same risk;

h.i. The policies shall contain an agreed valued endorsement and an inflation guard endorsement; and if necessary, steam boiler and machinery coverage endorsement or stand alone coverage with a minimum liability per accident equal to the value of the building housing the boiler or machinery.

i.j. The Association's insurance policies shall not be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

**8.3 Appraisal.** Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors may obtain an appraisal of the full replacement value of all Condominium Buildings and related Improvements upon the Project without deduction for depreciation for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. An appraisal to determine the maximum replacement value shall be obtained if required by the Association's insurer.

**8.4 Unit Owner's Insurance.** Each Unit Owner shall be responsible for obtaining and maintaining, in their own discretion and at their own expense, casualty and liability insurance covering the Unit and the appurtenant Limited Common Elements and those portions of the Unit not insured by policies maintained by the Association, including but not limited to, finished surfaces (of walls, floors and ceilings), flooring, cabinetry, fixtures, and appliances. Each Unit Owner is also responsible for obtaining insurance covering Owner's personal property, coverage for liability arising within the Unit or the appurtenant Limited Common Elements, and coverage to address the difference between the Unit Owner's deductible and the Association's deductible. The Association shall have no liability for the failure of any Unit Owner to maintain their own insurance. Each Unit Owner shall notify the Board of all structural or mechanical improvements made by the Owner to the Unit. Upon request by the Board, the Unit Owner shall furnish a copy of their insurance policy or policies to the Association. Any such Owner shall also promptly notify the Board in writing in the event such policy is cancelled.

**8.5 Lot Owners' Insurance.** Each Lot Owner shall be responsible for obtaining and maintaining, in their own discretion and at their own expense, adequate insurance against fire and all other hazards with respect to Improvements on their Lot. Lot Owners may carry other or additional insurance for their benefit and at their expense. All such policies shall contain waivers

**Commented [WEA19]:** Current language violates CRS 38-33.3-313(4)(d), revisions are for compliance with that provision.

**Commented [WEA20]:** Superseded by CRS 38-33.3-313 and appropriately addressed in 8.2(a) above

**Commented [WEA21]:** As revised per First Declaration Amendment.  
  
Further revised to clarify Unit Owner insurance responsibility is not a covenant that the Association has any duty to enforce.

of subrogation described in Section 8.2(c) above, and shall not affect or diminish the liability of the carriers issuing insurance to the Association. Insurance coverage on the Lot Owner's personal property and any public liability coverage on Lot shall be the Owner's sole and direct responsibility, and the Association shall have no responsibility therefor.

**8.6 Other Insurance Coverage.** The Association shall maintain in full force and effect workers compensation policies or participate in the state compensation worker's fund, in accordance with the requirements of Colorado law. The Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

a. The Board may purchase and maintain in full force at all times demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. Such policy, if purchased, shall contain a determinable demolition clause, or similar clause, to allow for the coverage of the costs of demolition in the event of destruction and a decision not to rebuild.

b. The Board may obtain such other insurance as the Board of Directors shall determine from time to time to be desirable, including fidelity bonds or insurance covering the Association's employees and agents and any insurance indemnifying the Association's officers, directors, employees and agents.

c. Any Association insurance policy may contain such deductible provisions as the Board of Directors deems in its sole discretion, to be consistent with good business practices.

d. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under the Association's insurance policies and to execute and deliver releases upon the payment of claims.

e. The Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as Certificate of Insurance) to the Board that such party has current satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance.

**8.7 Beneficiaries of Insurance Policies and Certificates.** All of the Association's insurance policies shall be for the benefit of the Association and the Owners and their Mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association.

Certificates of Insurance Coverage or copies of insurance policies shall be issued to each Owner and any Mortgagee that makes a written request to the Association for any such certificate or copy. To the extent permitted by applicable law, the Association may charge a reasonable fee for providing such a copy or certificate to meet its expenses incident to providing the same.

**8.8 General Insurance Provisions.** Any insurance coverage obtained by the Association shall be subject to the following:

Commented [WEA22]: Added per First Declaration Amendment.

a. The deductible amount, if any, on any insurance policy the Board purchases may be treated as a Common Expense payable from Annual Assessments or Special Assessments, or as an item to be paid from working capital reserves established by the Board; or alternatively, the Board may treat the expense as a Specific Assessment against an Owner whose Unit or Lot is specifically affected by the damage or whose acts or omissions resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible in the same manner as an Assessment.

b. The insurance coverage described in this Article shall be considered minimum coverage and the Association may be obligated to secure and maintain such other or additional coverage as may be required by law or C.R.S. § 38-33.3 313, which is also applicable to supplement the provisions of this Article.

c. Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage provided by the Board pursuant to this Article shall be a Common Expense to be paid by as Annual Assessments and apportioned amongst the Owners as provided in this Declaration.

#### **ARTICLE IX**

#### **Casualty, Destruction, Obsolescence or Condemnation; Restoration; and Association as Attorney-in-Fact**

**9.1 Association as Attorney-in-Fact.** As provided in this Section, this Declaration makes mandatory the irrevocable appointment of the Association as Attorney-in-Fact to deal with the Property upon its damage or destruction, for its repair and reconstruction or its obsolescence and to maintain, repair and improve all elements of the Project (except with respect to a Lot or Improvements upon a Lot) including the Condominium Buildings and Improvements upon the Condominium Parcel and the Common Elements. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by the grantee of a deed or other instrument of conveyance from any Owner or grantor shall constitute appointment of the Association as Attorney-in-Fact. All of the Unit Owners within the Project irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the Property upon its damage or destruction or obsolescence. As Attorney-in-Fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interests of the Unit Owners which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the Improvements as used in this Article means restoring the Improvements to substantially the same condition in which they existed prior to the damage, with each Unit and the Common Elements having substantially the same boundaries, and with respect to any Unit having the same vertical and horizontal boundaries, as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement unless the Owners and holders of First Mortgages or first agree not rebuild in accordance with this Article.

**9.2 Reconstruction.** In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct all Improvements on the affected Property (excluding any Lot or the Improvements on any Lot), shall be applied by the Association as Attorney-in-Fact, to such reconstruction, and the Improvements shall be promptly repaired and reconstructed. The Association shall have the full authority, right and power, as Attorney-in-Fact, to cause the repair and restoration of the Improvements. Common Expense Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction.

If the insurance proceeds are insufficient to repair and reconstruct the Improvements and if such damage is not more than 50% of the total replacement costs of all the Improvements in this Project (excluding those Improvements located within a Lot that the Association does not own), not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as Attorney-in-Fact, using the proceeds of insurance and proceeds of a special Assessment to be made against all of the Owners and Units. Such deficiency assessment shall be a Common Expense and be made pro rata according to each Unit Owner's Allocated Interest and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as Attorney-in-Fact, to cause the repair, replacement and restoration of the Improvements using all of the insurance proceeds for such purposes, notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as provided in Article VII. In addition thereto, the Association, as Attorney-in-Fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit shall be sold by the Association, as Attorney-in-Fact pursuant to the provisions of this paragraph. Regular Common Expense Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing notices, interest at the rate of 15% per annum, subject to applicable law, on the amount of the Assessment and all other costs and expenses including reasonable attorney's fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as Attorney-in-Fact, in the following order:

- a. For payment of taxes and special assessment liens in favor of any governmental assessing entity;
- b. For payment of the balance of the lien of any First Mortgage;
- c. For payment of the customary expenses of sale;
- d. For payment of unpaid Common Expenses and all costs, expenses and fees incurred by the Association, or its managing agent or representative;
- e. For payment of junior liens and encumbrances in the order and to the extent of their priority; and
- f. The balance remaining, if any, shall be paid to the Unit Owner.

**9.3 Substantial Destruction and the Sale of the Affected Property.** If the insurance proceeds are insufficient and not equal to repair and reconstruct the damaged Improvements on the affected Property, and if such damage is more than 50% of the total replacement cost of all Improvements in the Project, not including land, and 51%, or more, of the Owners of the affected Property do not voluntarily, within 100 days thereafter, make plans for the reconstruction which plan must have the approval or consent of 75%, or more, of the holders of First Mortgages, then the Association shall forthwith record a Notice setting forth such fact or facts, and upon the recording of such Notice and with the written consent of 75% of the holders of recorded First Mortgages, the entire remaining premises of the affected area shall be sold by the Association pursuant to the provisions of this paragraph, as Attorney-in-Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map or Plats, and the Bylaws. The Association shall collect the insurance settlement proceeds, and it shall divide such proceeds in accordance with the affected Owners in accordance with their interest in the affected Property, if any, and such divided proceeds shall be paid into separate accounts, each such account representing one of the affected Units or Lots. Each such account shall be in the name of the Association, and shall be further identified by the Unit or Lot designation in the name of the Owner. From each separate account, the Association, as Attorney-in-Fact, shall forthwith use and disburse the total amount in each account without contribution from one account to another toward the partial or full payment of the lien of any First Mortgage against the Unit or Lot represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. This apportionment shall be based upon each Unit or Lot Owner's interest in the affected Property. The total funds in each account shall be used and disbursed, without contribution from one account to another, by the Association, as Attorney-in-Fact for the same purposes and in the same order as is provided in Section 9.2 (a)-(f) above.

**9.4 Substantial Destruction and Restoration of the Affected Property.** In the event of such damage or destruction as set forth in Section 9.3, and if a plan for reconstruction is adopted by the Owners and approved by the holders of First Mortgages, then all of the Owners shall be bound by the terms and provisions of such plan. Any assessment in connection with such plan shall be a Common Expense and shall be assessed pro rata to the affected Owners, and shall be due and payable as provided by the terms of such plan, but no sooner than 30 days after written notice thereof. The Association shall have full authority, right and power, as Attorney-in-Fact, to cause the repair, replacement or restoration of the Improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of any Owner to pay the Assessment. Common Expense Assessments shall not be abated during the period of insurance adjustment and repair and reconstruction. The Assessment provided for herein shall be a debt of each affected Owner and may be enforced and collected as is provided in Article VII. In addition thereto, the Association, as Attorney-in-Fact, shall have the absolute right and power to sell the Unit or Lot of any Owner refusing or failing to pay such Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a Notice that the Unit or Lot of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the Notices, interest at the rate of 15% per annum on the amount of the Assessments, subject to applicable law, and all reasonable costs including attorney's fees. Proceeds derived from the sale of such Unit or Lot and disbursed by the Association, as Attorney-in-Fact, for the same purposes and in the same order as is provided in Section 9.2 (a)-(f) above.



**9.5 Substantial Obsolescence.** The Owners representing an aggregate ownership interest of 75% or more of the Improvements in the affected Property may agree that the affected Property is obsolete and adopt a plan for renewal and reconstruction, which plan shall have approval of 75% or more of the holders of First Mortgages. If the plan for renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners of the affected area as a Common Expense Assessment, whether or not they have previously consented to the plan of renewal or reconstruction. The Assessment provided for herein shall be a debt of each affected Owner and may be enforced and collected as is provided in Article VII. The Association, as Attorney-in-Fact, shall have the absolute right and power to sell the Unit or Lot of any Owner refusing or failing such Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a Notice that the delinquent Owner's Unit or Lot shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the Notices, interest at the rate of 15% per annum on the amount of the Assessment, subject to applicable law, and all costs and expenses including reasonable attorney's fees. The proceeds derived from the sale of such Unit or Lot and disbursed by the Association, as Attorney-in-Fact, for the same purposes and in the same order as in provided in Section 9.2 (a)-(f) above.

The Owners representing an aggregate ownership interest of 75%, or more, of the Improvements in the affected Property may agree that the affected Property is obsolete and that the same shall be sold. Such plan or agreement must have the unanimous approval of every holder of a First Mortgage. In such instance the Association shall forthwith record a Notice setting forth such facts, and upon recording of such Notice, the entire premises shall be sold by the Association, as Attorney-in-Fact for all the Owners, free and clear of the provisions contained in this Declaration, the Maps or Plats and the Bylaws. The sale's proceeds shall be apportioned among the Owners of the affected Property and such proceeds shall be paid into separate accounts, each such account representing one Unit or Lot. Each such account shall be in the name of the Association, and shall be further identified by the Unit or Lot designation in the name of the Owner. From each separate account, the Association, as Attorney-in-Fact, shall use and disburse the total amount of each such account without contribution from one account to the other for the same purposes and in the same order as is provided in Section 9.2 (a)-(f) above.

**9.6 Condemnation.** If at any time or times during the continuance of the Unit or Lot ownership pursuant to the Declaration, all or part of the Project shall be taken or condemned by any public authority, the following provisions shall apply:

**a. Proceeds.** All compensating damages or other proceeds therefrom, the sum of which is hereinafter the "condemnation award", shall be payable to the Association.

**b. Complete Taking.**

**i.** If the entire Project is taken or condemned, the Unit or Lot Ownership pursuant thereto shall terminate. The condemnation award shall be apportioned among the Owners on the same basis as each Owner's Allocated Interest; provided, however, that if standards different from the value of the Property as a whole were employed as measure of

condemnation award in the negotiating, judicial decree or otherwise, then in determining such shares, the same standard shall be employed to the extent that is relevant and applicable.

ii. On the principles set forth in the preceding paragraph, the Association shall as soon as practicable, determine the share of the condemnation award to which is Owner is entitled. Such share shall be paid into separate accounts for each Unit and disbursed as soon as practicable and in the same manner and as set forth in Section 9.2 (a)-(f) above.

c. Partial Taking. If less than the entire Project is taken or condemned, the Unit or Lot ownership hereunder shall not terminate. Each affected Owner shall be entitled to a share of the condemnation award. As soon as practicable, the Association shall reasonably and in good faith allocate the condemnation award between compensation, damages and other proceeds and shall apportion the amounts so allocated among the Owners as follows:

i. The total amount allocated through the taking of or injury to the Common Elements shall be apportioned equally among the affected Owners.

ii. The total amount allocated to severance damages shall be apportioned to those Units or Lots which were not affected, taken or condemned.

iii. The respective amounts allocated to the taking of or damage to a particular Unit or Lot and to the Improvements an Owner has made within his own Unit or Lot shall be apportioned to the particular Unit or Lot involved.

iv. The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances or as determined by judicial decree. If the allocation of the condemnation award is already established by negotiation, judicial decree or otherwise, then in allocating the condemnation award, the Association shall employ such allocation to the extent applicable. Apportioned proceeds shall be disbursed as soon as practicable in the manner set forth in Section 9.2 (a)-(f) above.

## **ARTICLE X**

### **Architectural Control**

**10.1 Architectural Advisory Committee.** The AAC shall be appointed by the Board of Directors and shall consist of at least 3, but no more than 5, individuals who may or may not be Owners. The Board shall serve as the Architectural Advisory Committee at any time in which no AAC has been appointed.

**10.2 No Change in Property Without Approval.** No Change in Property shall be made or permitted without the Association's prior written approval and compliance with the provisions of this Article X.

"Change in Property" shall mean: (a) The construction or expansion of any building, structure or other Improvements, including utility facilities or equipment; (b) the destruction by

**Commented [WEA23]:** This Article is similar to what the current Declaration Art. IX provides. It has been revised to clarify the authority of the AAC as currently provided in Art. IX Sec. 14.5, Board adoption of architectural and design guidelines, and the AAC's authority to make recommendations to the Board regarding applications for approval.



voluntary action or the abandonment of any building, structure or other Improvements; (c) the excavation, filling or similar disturbance of the surface of land including without limitation, change of grade, stream bed, ground level or drainage pattern; (d) the clearing, marring, defacing or damaging of trees, shrubs, or other growing things, (e) the landscaping or planting of trees, shrubs, lawns or plants; or (f) any change or alteration, including without limitation, any change of color, texture or exterior appearance from any previously approved Change in Property.

**10.3 Certain Special Objectives.** The Association shall have complete discretion to approve or disapprove any Change in Property. In exercising such discretion, the Association shall keep the following objectives in mind, among others: To carry out the general purposes expressed in this Declaration; to prevent violation of any specific provision of this Declaration; to prevent any change which would be unsafe or hazardous to any Person or property; to minimize obstruction or diminution of the view of others; to preserve as much as possible visual continuity of the area and to minimize marked or unnecessary transition between improved and unimproved areas and any sharp definition of boundaries of property ownership; to assure that any change will be of good and attractive design and in harmony with the natural setting of the area and will serve to preserve and enhance existing features of natural beauty; to assure that materials and workmanship for all Improvements in the area are of high quality comparable to other Improvements in the area; and to assure that any property will require as little maintenance as possible so as to assure a better appearing area under all conditions.

**10.4 Conditions Precedent to Approval.** Prior to the commencement of work to accomplish any Change in Property, the Owner thereof shall submit a written application for approval to the Association together with a complete and full description of the proposed change, a site plan depicting the proposed change drawn to such scale as may be reasonably required by the Association, showing all boundaries, showing existing and proposed contour lines and elevations at reasonably detailed intervals, showing all existing and proposed improvements, showing the existing and proposed utility and sanitation facilities and showing the existing and proposed substantial trees or shrubs. The Owner shall also furnish the Association with any and all further information related to the property or the proposed Change in Property which the Association may reasonably require including, without limitation, a qualified engineer or geologist report regarding the affect on the drainage pattern of any property. With respect to all buildings and other structures, the Association may require submission of floor plans, elevation drawings, and final work drawings; descriptions of exterior materials and colors and samples of the same; and final construction specifications. The Association may require that the designs, plans and specifications be prepared by a licensed architect or engineer. The Association may require that Owners pay an application fee with any application, in such amount as the Architectural Committee may determine, to cover costs and expenses of review. No proposed Change in Property shall be deemed to have been approved unless approval is in writing.

**10.5 Architectural Advisory Committee.** Any functions to be performed by the Association pursuant to this Article X may be delegated to the Architectural Advisory Committee. Exercise of AAC's authority shall require the affirmative vote of a majority of its members. The AAC's actions shall be subject to the Board approval.

**10.6 Fees; Assistance.** The AAC may establish and charge reasonable fees for application review and may require such fees to be paid in full prior to review. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget.

**10.7 Architectural Guidelines.** The Board may adopt Architectural Guidelines, which may contain general provisions applicable to all of the Ranch as well as specific provisions which vary between Units or between Lots so as to provide guidance to Owners regarding matters of particular concern to the AAC in considering applications.

**10.8 Procedures.** Except as otherwise specifically provided in the Architectural Guidelines, no construction activities shall commence on the Property until an application for approval has been submitted to AAC and approved by the Board. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction as applicable. The Architectural Guidelines, the AAC, or the Board may require the submission of such additional information as may be reasonably necessary to consider any application.

**a.** In reviewing each application, the Association may consider any factors that it determines are relevant including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and opinions may vary as to the desirability, or attractiveness, of particular Improvements. The Association shall have the sole discretion to make determinations on matters of aesthetic judgment, which determinations shall not be subject to review if made in good faith and in accordance with the procedures set forth herein.

**b.** The Association shall make a determination on each application within a reasonable time after receipt of the completed application and all required information. The Association may: approve the application with or without conditions; approve a portion of the application and disapprove other portions; or disapprove the application.

**c.** The Association shall give the applicant written notice of the final determination within 60 days of its receipt of a completed application. If the application is disapproved, the Association shall specify the reasons for any objections and offer suggestions for curing any objections. Notwithstanding the foregoing, the Association's failure to timely deliver written notice of its determination shall not have any effect.

**d.** Approval of any application may be conditioned on the Owner's execution of a written agreement setting forth the terms, conditions, and limitations for the authorization of an Improvement including, without limitation, provisions addressing the standards for completion of the work, continuing maintenance, repair or replacement obligations, and indemnification of the Association from all expense, damage or claims that may result from the work.

e. Approval of any application shall automatically expire one year after the date of approval if the approved work does not commence within that time period. In such circumstances, the applicant must resubmit its application before commencing any activities, unless the Association grants a written extension. Once approved work commences, it shall be diligently pursued to completion. All work shall be completed within 12 months of commencement unless otherwise specified in the Association's notice of approval, or the Association grants a written extension. If approved work is not completed within the required time, it shall be considered nonconforming and may be subject to an enforcement action by the Association.

**10.9 Variances.** The Board may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### **ARTICLE XI** **Duration and Amendment**

**11.1 Covenants Binding.** Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) is incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii) is, by virtue of an Owner's acceptance of any right, title or interest in any of the Property, accepted, ratified, adopted and declared as such Owner's personal covenant and is binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of all Owners within the Project; (iii) is a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien is a lien in favor of all Owners within the Project; and (iv) runs with the land.

**11.2 Amendment.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered or in any written ballot submitted to the membership. A resolution adopting a proposed amendment may be proposed ~~by an Owner~~ at a meeting of Members of the Association. The resolution shall be adopted by approval of not less than ~~seventy-five percent (75%) of the Members exercised by their vote or written consent~~ all votes in the Association. A copy of each amendment shall be certified by at least two officers of the Association and the amendment shall be effective when recorded in the public records of Garfield County, Colorado.

**11.3 Mortgagee Notice of Action.** Any First Mortgagee, upon written request to the Association, will be entitled to timely written notice of:

a. Any proposed amendment of the Governing Documents effecting a change in (i) the boundaries of any Unit or Lot or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements appurtenant to the Unit or Lot or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Unit or Lot, or (iv) the purposes to which any Unit or Lot or the Common Elements are restricted or any amendment set forth in Section 11.4 below.

b. Any proposed termination of the common interest community;

c. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit or Lot on which there is a First Mortgage held, insured or guaranteed by a governmental agency;

d. Any delinquency in the payment of Assessments owed by the Unit or Lot Owner subject to the Mortgage which such delinquency has continued for a period of 60 days;

e. Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

**11.4 Mortgagee Approval of Amendments.** Approval shall first be obtained of 51% of First Mortgagees (which percentage is measured by votes allocated to such Units or Lots) if the amendment to the Governing Documents add or delete any material provisions, which establish, provide for, govern or regulate any of the following:

a. Voting;

b. Assessments, Assessment liens or subordination of such liens;

c. Reserves for maintenance or repair and replacement of the Common Elements;

d. Insurance or fidelity bonds;

e. Responsibility for maintenance and repair of the Project;

f. Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;

g. Boundaries of any Unit or Lot;

h. The interests in the Common Elements;

i. Imposition of any restrictions on the leasing of Units or Lots;

j. Imposition of any right of first refusal or similar restriction on the right of a Unit or Lot Owner to sell, transfer, or otherwise convey his Unit or Lot;

**k.** Establishment of self-management by the Association where professional management has been required by any governmental agency;

**l.** Any provision, which is for the express benefit of a governmental agency or First Mortgagees, regardless of whether the amendment is material;

**m.** Hazard or fidelity insurance requirements; and

**n.** Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

**o.** Any of the following amendments must also be approved by the record holders of Mortgages on not less than 75% of the Units or Lots in the Project which are encumbered by a Mortgage:

**i.** Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees;

**ii.** Any amendment which would necessitate a Mortgagee after it has acquired a Unit or Lot through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing prior to such foreclosure;

**iii.** Any amendment which would or could result in a Mortgage being cancelled by forfeiture, or in the individual Units or Lots not being separately assessed for tax purposes;

**iv.** Any amendment relating to the insurance provisions hereof, or to the application of insurance proceeds, or to the disposition of any money received in any taking under condemnation proceedings;

**v.** Any amendment which would alter the proportionate ownership interests, rights and easements of the Unit or Lot Owners in the Common Elements from the interests, rights and easements established hereunder; provided, however, that the changes of interests, rights or easements contemplated herein shall not be considered to be a change in proportionate interest hereunder;

**vi.** Any amendment which would effect a partition of any portion of the Common Recreation Reserve; and

**vii.** Any amendment which would materially change Articles IX or X hereof.

**11.5 Action by Mortgagee.** If this Declaration or any Governing Documents require the approval of any governmental agency or Mortgagee then, if any Mortgagee or governmental agency fails to respond to any written proposal for such approval within 60 days

after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

## **ARTICLE XII**

### **Enforcement; Waiver**

**12.1 Enforcement.** Violation or breach of any covenant, condition or restriction herein contained shall give the Association, the right to enter upon the property upon or as to which said violation or breach exists and to summarily abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, or shall give to the Association or an Owner the right to prosecute a proceeding at law or in equity against the Persons who have violated or are attempting to violate any of these covenants, conditions or restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

**12.2 Waiver of Enforcement.** The Association's failure to insist, in any one or more instances, upon strict performance of any of the covenants, conditions, limitations, restrictions, reservations, liens and charges as set forth in this Declaration, or to exercise any right or option herein contained, or to serve any notice or institute any action shall not be construed as a waiver or relinquishment, for the future, of such term, of such covenant, condition, limitation, restriction, reservation, lien or charge shall remain in full force and effect. The receipt and acceptance by the Board of assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed to waive such breach, and no such waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

## **ARTICLE XIII**

### **General Provisions**

**13.1 Severability.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall be not affected thereby.

**13.2 Succession.** This Declaration shall be binding upon, and shall inure to the benefit of, the heirs, personal representatives, grantees, and assignees of each Owner.

**13.3 Notices.** Notices to Owners may be given as provided in the Act or the Colorado Nonprofit Corporation Act, C.R.S. § 7-121-402.

**13.4 Captions.** Section and other headings are inserted for convenience only and are not intended to be a part of this document or in any way to define, limit or describe the scope or intent of the particular section to which they refer.

**13.5 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project and shall not be construed to interfere with or prevent the sale, conveyance, transfer, or encumbrance of any Unit or Lot.

**13.6 Conflicts Between Documents.** In case of conflict between this Declaration and the Articles and the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

**13.7 Acceptance of Provisions of All Documents and Obligations of Owners and Members.** The conveyance or encumbrance of any Unit or Lot shall be deemed to include the acceptance of all of the provisions of this Declaration and the other Governing Documents, and all shall be binding upon each Owner or encumbrancer without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance. Each Owner or Member shall cause the Association to exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Governing Documents.

**13.8 Colorado Law.** The provisions of this Declaration shall be interpreted in accordance with all appropriate provisions of law.

**13.9 Forum.** Any litigation involving a dispute related to the interpretation or enforcement of this Declaration shall be brought in a Court of competent jurisdiction in Garfield County, Colorado, and the prevailing party in any such action shall be entitled to an award of reasonable attorney's fees and costs incurred.

**\*\*\*\* REMAINDER OF PAGE LEFT INTENTIONALLY BLANK \*\*\*\***

**RANCH AT ROARING FORK HOMEOWNERS ASSOCIATION, Inc.**, a Colorado nonprofit corporation

Notary Public