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Kristy Archuleta  
Archuleta County

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## RIVER ROCK ESTATES

RRE Sales LLC  
RE: 597 NAVAJO TR DR  
Pagosa Springs, CO 81147

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## DECLARATION FOR RIVER ROCK ESTATES

(An attached home planned community, subject to all of the Colorado Common Interest Ownership Act)

This Declaration River Rock Estates ("Declaration") is made by the Declarant (as defined below) and is effective upon recording.

### RECITALS

A. Legal Description "A"

B. Initial Lots "B"

C. Declarant is the owner of certain real property located in the County of Archuleta, State of Colorado, described as set forth in *Exhibit A*.

D. The Declarant desires to create a planned residential Community on the real property described in *Exhibit A* in which portions of the real property are designated for residential use (as provided for in this Declaration) and in which portions may be designated as Common Elements.

E. The Declarant has caused the "River Rock Estates Homeowners Association, Inc.," a Colorado nonprofit corporation, ("Association") to be incorporated under the laws of the State of Colorado for the purpose of exercising the functions as set forth in this Declaration and as to which each Owner is a member.

F. Real Property That May Be Annexed "G"

### ARTICLE 1. NAMES, TYPE, PURPOSES, SUBMISSION AND DEFINITIONS

**Section 1.1 Names and Type.** The type of common interest community is a planned community. The planned community's name is River Rock Estates. The Association's name is River Rock Estates Homeowners Association.

**Section 1.2 Purposes.** One of the Community's and the Association's goals, as well as a goal of this Declaration, is to preserve the value and desirability of the Community, the Residences and the Lots. Additional goals are set forth in this Declaration and/or in other Governing Documents of the Community, including the goal of furthering the interests of the Community's Owners and Residents.

**Section 1.3 Submission of Real Estate.**

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Archuleta County

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(a) The Declarant submits the Real Estate described in *Exhibit A*, as it may be amended, together with all easements, rights, and appurtenances and the buildings and improvements erected or to be erected to the provisions of the terms and conditions of this Declaration.

(b) Declarant declares that all of the Real Estate, as described in *Exhibit A*, and as added by expansion, shall be and is held or sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Declaration.

(c) Declarant further declares that this Declaration is made for the purposes set forth in this Declaration, that this Declaration runs with the Real Estate and shall be and is binding on all Persons and parties having any right, title or interest in the Real Estate or any part, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner and the Association.

**Section 1.4 Definitions.** Terms used in these Governing Documents, as defined below, have their normal, generally accepted meanings or the meanings given in the Colorado Common Interest Ownership Act or the Colorado Revised Nonprofit Corporation Act, unless the context requires otherwise.

(a) Act means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as may be amended from time to time.

(b) Assessment includes all Common Expense Assessments, any Insurance Assessments (if any), Utility Assessments (if any), and any other expense levied to a Lot pursuant to this Declaration or the Act.

(c) Association means River Rock Estates Homeowners Association, a Colorado nonprofit corporation and its successors.

(d) Board or Board of Directors means the body responsible for management and operation of the Association. The term has the same meaning as executive board as defined in the Act.

(e) Bylaws mean the Bylaws of the Association.

(f) Common Area or Common Element means all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements on that real property, excluding the Lots. Common Area means the same as common elements in the Act.

(g) Common Expense Assessment means an Assessment levied for Common Expenses.

(h) Common Expenses mean the expenses and liabilities incurred or anticipated to be incurred by the Association including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Areas, and for fulfilling any of the Association's powers and duties.

(i) Community means all that property described in *Exhibit "A."*

(j) Declaration means this Declaration, as may be amended and supplemented from time to time.

(k) Declarant means the Declarant named in this Declaration and/or any successor and/or assignee designated by written notice or assignment executed by Declarant and by the transferee, and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to such transferee.

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(l) Declarant Control means the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of: 60 days after conveyance of 75% of the maximum number of Lots that may be created as provided for in this Declaration; 2 years after the last conveyance of a Lot by Declarant in the ordinary course of business; or 2 years after the last annexation or expansion of the Community, whichever occurs first.

(m) Development Rights and/or "Special Declarant Rights" means those rights set forth in this Declaration and those rights set forth in CCIOA.

(n) Director means any person serving as a member of the Board of Directors.

(o) Excluded Claim(s) means to the full extent of state statutes, any claim in a civil action, lawsuit or arbitration (other than the arbitration allowed for in this Declaration) related to construction on a Lot, of the Residences or the Common Elements, drainage within the Community or any improvements constructed or designed by Declarant on the Common Elements or the following persons: a contractor, subcontractor, developer, builder, architect, engineer or inspector, or any of the affiliates of their persons or persons responsible for any part of the construction or design of the Common Elements, including officers, directors, shareholders, members, managers, employers or servants of these persons.

(p) Excluded Dispute means a dispute about an Excluded Claim.

(q) First Lien Holder means a holder, insurer or guarantor of a first Mortgage, subject to the Association's priority lien as allowed by state law and this Declaration.

(r) Governance Policies means those governing and operating policies of the Association, as required by the Act and as adopted by the Association.

(s) Governing Documents mean this Declaration and its exhibits, the Association's articles of incorporation, Bylaws, Plat and/or Map, Rules and Regulations and any Policies and Procedures, all as may be supplemented or amended from time to time.

(t) Improvement means every structure of every type and kind including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water sewer, gas, electricity, solar energy, telephone, regular or cable television or other utilities.

(u) Insurance Assessment means an Assessment levied for insurance covering parts of a particular Lot.

(v) Limited Common Area or Limited Common Element means portions of the Common Area or other real property reserved for the exclusive use of those entitled to occupy one or more, but less than all, Lots, as more particularly set forth in this Declaration or in the Plat and/or Map.

(w) Lot or Parcel means and refers to any of the separately numbered lots or plots shown upon any recorded subdivision Plat of the Community or a Map, except the Common Area and any public streets or rights-of-way.

(x) Managing Agent means the management company, manager and/or bookkeeper engaged by the Association to assist in the operations, administration and governance of the Community.

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(y) Map means the map(s), if any, for Lots or Parcels in the Community, and which may designate areas as Common or Limited Common Areas as recorded, which map(s) is/are a part of this Declaration.

(z) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.

(aa) Mortgage Holder means the holder of any Mortgage.

(bb) Owner or Member means the record titleholder of a Lot within the Community, but does not include a Mortgage Holder.

(cc) Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(dd) Plat means the subdivision plat(s) for the Community as recorded, which plat(s) is a part of this Declaration.

(ee) Policies and Procedures mean any instrument, as a part of any of the Governing Documents and/or separately adopted by the Association, required under the Act as responsible governance policies, and other policies as may be adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations.

(ff) Officer means any person serving as an officer of the Association in accordance with the Bylaws.

(gg) Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(hh) Policies and Procedures mean any instrument, however denominated, as a part of any of the Governing Documents, and/or separately adopted by the Association, as required under the Act as responsible governance policies, and other policies as may be adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations and Governance Policies.

(ii) Real Estate means the property to be described in *Exhibit A*, together with all easements, rights, and appurtenances and improvements erected or to be erected. All easements and licenses, that the Community is subject to as of the date of this Declaration, are to be recited in *Exhibit A*. Easements and licenses, that the Community may become subject to, are allowed for as a reserved right of the Declarant and/or the Association.

(jj) Recreational Facilities means and refers to the Park and pond, trails and clubhouse, if any, or as those and other amenities or facilities may change from time to time.

(kk) Residence means the dwelling unit located on the Lot.

(ll) Resident means any Person staying overnight in a Residence for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year, and includes tenants.

(mm) Rules and Regulations means any instrument adopted by the Association, as allowed for under this Declaration and the Act, for the regulation and management of the Community, Residents, Common Area and/or Lots, including any amendments or revisions.

(nn) Utility Assessment means an Assessment for utilities based on the actual usage of utilities by a particular Lot.

(oo) Utility Systems has the meaning set forth in the applicable portions of this Declaration.

**ARTICLE 2. NUMBER OF UNITS, BOUNDARIES, COMMON AND LIMITED COMMON ELEMENTS AND EASEMENTS**

**Section 2.1 Number of Lots / Maximum number of Lots that may be created.**

(a) The number of Lots initially included in the Community is ten (10), as set forth in *Exhibit B*.

(b) Although this section is not to be relied upon as a representation or guaranty by the Declarant as to the actual number or type of Lots that will ultimately comprise the community, Declarant may add, combine or subdivide Lots provided the maximum number of Lots in the Community does not exceed ten (10) Lots.

**Section 2.2 Lots and Boundaries.** The Community consists of Lots, any Common Elements and any Limited Common Elements and each Lot's allocated interest in the Common Elements. Each Lot is conveyed as a separately designated and legally described Lot subject to the Act and the Governing Documents.

(a) Residential Lot Boundaries.

(i) Vertical Boundaries. Each Lot's vertical boundaries are the vertical planes shown on the Plat and/or Map.

(ii) Horizontal Boundaries. Horizontal boundaries, if any, are shown on the Map.

(b) Physical Boundaries. In interpreting deeds and the Plat and/or Map, the existing physical boundaries of a Lot, including the Residence as originally constructed or reconstructed in substantial accordance with the original Plat and/or Map are conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or the Plat and/or Map, regardless of settling or lateral movement of the building in which the Residence was located, and regardless of minor variances between the boundaries shown on the Plat and/or Map or in a deed and those of the Lot.

(c) Inclusions. Each Lot includes the spaces and improvements lying within the boundaries described above, as depicted on the Plat and/or Map. Each Lot also includes the spaces and improvements containing utility meters, water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, fire protection, smoke detector and security systems and communications, televisions, telephone and other telecommunications and electrical receptacles and boxes serving that Lot exclusively.

(d) Exclusions. Except when specifically included by other provisions of this Declaration or by the Plat and/or Map, the following are excluded from each Lot: the spaces and improvements lying outside the boundaries described above, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other services to other Lots and/or any Common Elements.

**Section 2.3 Common Elements.** The initial Common Elements are identified in *Exhibit "D."* The Common Elements are to remain undivided, and no Owner or any other Person may bring any action for partition or division of the whole or any part. Areas that may become Common Elements are identified in Exhibit "E."

**Section 2.4 Limited Common Elements.** The limited Common Elements are identified in Exhibit "F." The Limited Common Elements include:

(a) any portions of the Common Elements depicted on the Plat and/Map as a Limited Common Element, including any Declarant assigned parking or storage space, if any; and in the proper case, any Association assigned spaces, provided the Declaration and/or the Plat or Map are amendment to reflect that assignment by the Association.

(b) any fireplaces, decks, balconies, porches, patios, stoops, walkways, skylights, exterior doors and windows, window wells, enclosed yards, enclosed courtyards, storage spaces, parking spaces, carports, garages, attics, crawlspaces, furnaces, hot water heaters, air conditioning units and associated lines, and sump pumps serving a Lot or a Residence that are not defined or shown as being a part of the Lot; and

(c) any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside the boundaries of a Lot, the portion serving only the Lot is a Limited Common Element allocated solely to that Lot, and any portion serving more than one Lot or Residence is a Limited Common Element to those Lots. Any portion serving only the Common Elements is part of the Common Elements.

**Section 2.5 Assignment and Reassignment of Limited Common Elements.**

(a) A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Association, without the need for a vote of the Owners, upon written application to the Association by the Owner or Owners for whose exclusive use the Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected.

(b) Upon application, the Association is to prepare and execute an amendment to the Declaration and/or Map assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment is to be executed by the Owner or Owners making the application.

**Section 2.6 Easements for Use and Enjoyment.**

(a) Owners and Residents have a right and non-exclusive easement of ingress and egress, and use and enjoyment in and to the Common Elements, which are appurtenant to and pass with the title to the Lot, subject to the following provisions:

(i) the Owners' rights to the exclusive use of the Limited Common Elements assigned to their respective Lots;

(ii) the Association's right to have access to Lots, the Residences and Limited Common Elements assigned to a Lot to discharge its rights and obligations, under the Governing Documents, including without limitation, the Association's maintenance responsibility;

(iii) the Association's right to suspend an Owner's rights to use the recreational facilities, if any, for any period during which any Assessment or charge against their Lot remains unpaid and for a reasonable period of time (not to exceed 60 days or for the duration of the violation) for an infraction of the Declaration, Bylaws, or Rules and Regulations;

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(iv) the Association's right to grant easements, leases and licenses across the Common Elements including the right to license parking spaces];

(v) the Association's right to dedicate or transfer all or any portion of the Common Elements subject to approval of Owners holding 67% of the total Association vote; and

(vi) the Association's right to change the use of portions of the Common Elements or to close portions of the Common Elements; provided, however, permanent closure of any recreational facilities, if any, is to require the affirmative vote of a majority of Members voting at properly called Member meeting.

(b) Any Owner may delegate their rights of use and enjoyment in and to the Common Elements and facilities located thereon to the members of their family, or other Residents and guests. If the Lot is leased, the Owner is to be deemed to have delegated these rights to the Residents of their Lot.

(c) A pond exists between and lying upon the boundaries of Lots 8 and 9. That Pond is not a common element. Within 60 days after both Lots 8 and 9 have been sold, transferred and conveyed into private ownership, the Owners of those Lots shall cause a Shared Pond Agreement to be approved by the Declarant and the Association addressing foreseeable issues that might arise from two neighboring properties sharing a common pond to include but not be limited to procurement of insurance listing the Association as an additional insured. The Shared Pond Agreement, prepared at the sole cost of the owners of Lots 8 and 9, shall be recorded with the Archuleta County Clerk and Recorder and shall govern the relationship between Lots 8 and 9 over their shared pond in perpetuity.

**Section 2.7 Easement for Entry.**

(a) Each Lot is subject to an easement in favor of the Association (including its agents, employees and contractors) and to each Lot Owner to allow for their performance of obligations in this Declaration.

(b) On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property, pursuant to this Declaration.

(c) Except in an emergency situation, entry is to be only during reasonable hours and after reasonable notice to the Owner or Resident of the Lot. For the purposes of this Section, an emergency justifying immediate entry into a Lot includes, but is not limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a Person or animal might be injured or sick and require immediate medical attention.

(d) The failure to exercise the easement rights in the event of emergency, security, or safety purposes does not create liability to the Association, it being agreed that no duty to enter a Lot for such purposes exists.

**Section 2.8 Support.** Every portion of a Lot and all Common Elements contributing to the support of an abutting Residence are burdened with a non-exclusive easement of support for the benefit of the abutting Residence.

**Section 2.9 Encroachments.** To the extent that any Lot or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists. This easement does not relieve an Owner of liability in case of intentional misconduct.

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**Section 2.10 Utilities.** To the extent that any utility line, pipe, wire, or conduit serving any Lot(s) or the Common Elements lies wholly or partially within the boundaries of another Lot or the Common Elements, the other Lot(s) or the Common Elements are burdened with a non-exclusive easement for the use, maintenance, repair and replacement of the utility line, pipe, wire or conduit, the non-exclusive easement to be in favor of the Lot(s) or Common Elements served by the same and of the Association.

**Section 2.11 Utility, Map and Plat Easements.** Easements for utilities and other purposes over and across the Lots and Common Elements may be as shown upon the Plat and on the recorded Map of the Community, if any, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

**Section 2.12 Emergency Easements.** A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

**Section 2.13 Utility Reservations.** Declarant creates and reserves to itself, until Declarant has sold the last Lot that may be created to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Real Estate, the Community and the Lots for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment and effluent irrigation systems, gas, telephone and other telecommunications systems, electricity, heat and cooling systems, and master television and satellite antenna or cable systems, and any other utility systems as may be desired or provided (collectively, "Utility Systems"). By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Real Estate and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, heat and cooling facilities, telephone and other telecommunications facilities, telephone and television wires, circuits, conduits and meters, and any other improvements or facilities appurtenant or relating to the Utility Systems. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Declaration requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Real Estate is reserved, provided the easement granted does not conflict with the terms of this Declaration. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Real Estate. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section is to be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

**Section 2.14 Warranty, Repair and Construction Easement.** The Declarant and its assignees has the right to perform warranty work, repairs and complete construction on a Lot or a Residence, the Common Elements or any part of the Community, even after conveyance of a Lot to an Owner, after notice and with reasonable coordination with the Owner or Resident. This includes the right to control such work and repairs, along with a right of access, until completion. These rights of Declarant are not to be construed as development rights or special declarant rights or other rights allowed for under CCIOA, but rather, as rights independent of CCIOA, based on common law.

### **ARTICLE 3. ASSOCIATION MEMBERSHIP, ALLOCATION OF INTERESTS AND THE ASSOCIATION**

#### **Section 3.1 Membership**

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(a) Every Person who is a record Owner of a fee interest in any Lot subject to this Declaration is a Member of the Association.

(b) Membership is appurtenant to and may not be separated from ownership of any Lot.

(c) Ownership of a Lot is the sole qualification for membership.

(d) No Owner, whether one or more Persons, has more than one membership per Lot owned.

(e) Membership does not include Persons who hold an interest as security for the performance of an obligation, but granting a security interest does not terminate the Owner's membership.

### **Section 3.2 Allocated Interests.**

(a) Voting. The Owner or collective Owners of a Lot is entitled to one equally weighted vote for the Lot. When more than one Person holds an ownership interest in any Lot, the vote for the Lot is to be exercised as those Owners determine among themselves, otherwise the Lot's vote is suspended if more than one Person seeks to exercise it. Provided, further, if title to any Lot is owned in the name of a corporate entity, trust, partnership or other similar vehicle then such entity shall designate in writing one individual who is authorized to act on behalf of such entity and such designation shall be received by the Association no less than twenty-four (24) hours in advance of any vote being taken.

(b) Common Expenses. Except as provided below or elsewhere in the Governing Documents, the amount of all Common Expenses is to be assessed equally against all the Lots. The Common Expense liability for each Owner shall be determined based on a fraction, the numerator of which is the total number of Lots owned by the Owner and the denominator of which is the total number of all Lots within the Common Interest Community as of the date of the calculation.

### **Section 3.3 General Purposes, Powers, Authority and Restrictions on and of the Association.**

(a) The Association, acting solely through its Board of Directors, is to perform functions and manage the Community including its business affairs as provided in the Governing Documents so as to serve the purposes of the Community as set forth in the Governing Documents.

(b) Any purchaser of a Lot is deemed to have assented to, ratified and approved this Declaration and the terms of this Declaration.

(c) The Association has all power necessary or desirable to effectuate the purposes of the Community and the purposes of the Association.

(d) The business affairs of the Community shall be managed by the Association, acting through the Board. Unless a particular power is expressly reserved to the Owners, all powers of the Association are to be exercised by, and the business and affairs of the Association are to be conducted and managed by the Board of Directors.

(e) The Association is governed by the Governing Documents and other applicable laws.

(f) The Board may, by written resolution, delegate authority to a Managing Agent or bookkeeper for the Association, provided no such delegation relieves the Board of final responsibility.

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(g) The Association may not commence an arbitration on an Excluded Claim without first complying with the terms of other provisions of this Declaration.

(h) The Association may not sue on an Excluded Claim.

**Section 3.4 Association Agreements.** Any agreement for professional management of or bookkeeping for the Community or any contract providing for services of the Declarant may not exceed 3 years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon 30 days written notice. The Association is not bound either directly or indirectly to contracts or leases (including management contracts) entered into during Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after at least 30 days' notice to the other party to the contract.

**Section 3.5 Open Meetings of the Association and Board.**

(a) All meetings of the Association and the Board are open to every Owner, or to any person designated by an Owner in writing as the Owner's representative.

(b) All Owners or designated representatives so desiring are permitted to attend, listen and speak at an appropriate time during the deliberations and proceedings.

(c) The Board may place reasonable time restrictions on those persons speaking during the meeting but must permit an Owner or a designated representative to speak before the Board takes formal action on an item under discussion, in addition to any other opportunities to speak.

(d) The Board may provide for a reasonable number of persons to speak on each side of an issue.

(e) Upon the final resolution of any matter for which the Board receives legal advice or that concerns pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate.

**Section 3.6 Governance Policies.** The Association is to adopt and maintain Governance Policies, to guide governance and operation of the Community and the Association and as required by CCIOA.

**Section 3.7 Declarant Control.** During Declarant Control, Declarant has the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove Officers and members of the Board of Directors.

**Section 3.8 Initial Owner Elections of Board Members.** Owners are to elect an Owner controlled Board as initially allowed for under a state statute known as the Colorado Common Interest Ownership Act. Subsequently, Board positions are to be filled by vote of the Owners and as allowed for in the Bylaws.

**Section 3.9 Declarant May Relinquish Rights.** At any time prior to the end of the Period of Declarant Control the Declarant may relinquish the right to appoint and remove Board members as may require certain specific actions of the Board to be approved by the Declarant.

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**Section 3.10 Indemnification.** To the full extent permitted by law, each Officer and member of the Board of Directors of the Association is indemnified by the Owners and the Association.

#### ARTICLE 4. ASSESSMENTS

**Section 4.1 Power and Purposes of Assessments.** The Association has the power to levy Assessments as provided for in this Declaration and under the Act.

**Section 4.2 Common Expense Assessments.** The Common Expense Assessments are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and Residents in the Community as may be more specifically defined and authorized from time to time by the Association.

**Section 4.3 Utility Assessments.** If any utility is billed in the name of an Owner but is provided, in common, to the Community, or is billed to the Association, the costs of that utility is to divided proportionately between all Owners relative to use or sub metering. The Association may sub meter utilities billed to it separately to each Lot.

**Section 4.4 Insurance Assessment.** If determined by the Board, Insurance Assessments may be imposed based on allocated risk, as reasonably determined by the Board in consultation with the Association's insurance agent or one or more of the Association's insurers and the Association's attorney.

**Section 4.5 Specific Lot or Residence Assessments.** The Association has the power to levy specific Assessments against a Lot or Residence pursuant to this Section as it deems appropriate.

(a) Any expense or liability incurred by the Association as a result of the intentional, negligent or wrongful act of an Owner, their family, guests or other Residents of the Residence on Lot, or any breach by any of these parties of any of the provisions of the Governing Documents, may be an Assessment against the Lot.

(b) Any expense associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed against the Lot(s) to which that Limited Common Element is assigned, equally or in any other equitable proportion as determined by the Association.

(c) Any expense benefiting fewer than all of the Lots, or significantly disproportionately benefiting all Lots, may be assessed equitably against those Lots benefited according to the benefit received. Except as provided in subsection (a) above, expenses incurred for the maintenance, repair or replacement of the Common Elements (but not the Limited Common Elements) may not be assessed as specific Lot Assessment.

(d) Any expense related to utilities not separately charged by the utility provider to the Lot or Owner may be assessed among the Lots served, with or without separate metering or an evaluation by an independent entity with expertise in making allocation determinations. Each Lot may be sub-metered for water and electricity and sewer. If not separately assessed, utilities may be assessed on the same basis as Assessments.

(e) Any expense related to insurance premiums may be assessed against Lots in proportion to risk.

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(f) Common Expenses Assessments are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and Residents in the Community as may be more specifically defined and authorized from time to time by the Association.

**Section 4.6 Personal Obligation for Assessments.**

(a) Each Owner covenants and agrees to pay to the Association:

- (i) Common Expenses Assessments or charges;
- (ii) special Assessments;
- (iii) any Insurance or Utility Assessments,
- (iv) specific Lot or Residence Assessments established pursuant to the terms of this Declaration;
- (v) any other Assessment authorized under this Declaration or the Act.

(b) Assessments are the personal obligation of the Person who owned the Lot when the Assessment fell due. The personal obligation to pay any past due sums due the Association does not pass to a successor in title unless expressly assumed.

(c) If any Lot is owned in the name of a corporate entity, trust, partnership or other similar vehicle then at the time such entity takes title to the Lot it shall designate at least one individual person who will be deemed to personally guaranty the entity's obligations for assessments hereunder.

**Section 4.7 Commencement of Assessments.**

(a) Assessments on the initial Lots included in the Community shall begin on the first conveyance of a Lot to an Owner. Prior to conveyance of the first Lot by Declarant the Declarant is responsible for the payment of expenses of the Association.

(b) Assessments for Lots subsequently added or annexed to the Community commence from the date the Lot is created or made subject to this Declaration.

**Section 4.8 Lien.** All Assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), up to the maximum amount permitted by law, is a charge and a continuing lien upon the Lot against which each Assessment is made. The Association has authority to record a notice of lien in the county's real property records evidencing the Association's lien. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under law. The lien has the priority set forth in the Act.

**Section 4.9 Payment of Assessments.** Assessments are to be paid in the manner and on the dates the Association determines. Unless otherwise provided by resolution, the Common Expense Assessment are to be paid in equal installments billed at the discretion of the board either monthly, quarterly or equally and due upon receipt. No Owner is exempt from liability for or may withhold payment of Assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Area, the Association's failure to provide services or perform its obligations, or inconvenience or discomfort arising from the Association's performance of its duties.

**Section 4.10 Delinquent Assessments.** All Assessments and related charges not paid on or before the due date are delinquent, and the Owner is in default.

(a) If any Assessment, fine, or charge is not paid in full within ten days of the due date, or any later date specified in the Association's collection policy:

(i) a late charge in an amount specified in the Association's collection policy may be imposed without further notice or warning;

(ii) interest at the rate specified in the Association's collection policy may be imposed without further notice or warning; and

(iii) upon 30 days written notice, the Association may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner loses the privilege of paying Assessments and charges in installments for that fiscal year, unless the Association, in its sole discretion reinstates the privilege.

(b) If any Assessments, fines or other charges remain unpaid more than thirty days after the due date, the Owner's right to vote and right to use the recreational facilities is automatically suspended until all amounts owed are paid in full, and the Association may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Colorado law, including reasonable attorney's fees. Enforcement under this section is not dependent upon or related to other restrictions and/or other actions.

(c) If partial payment of Assessments or other charges are made, the amount received is to be applied as specified in the Association's collection policy.

(d) The Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay the delinquent Assessments or related charges and may foreclose its lien against the Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for delinquent Assessments or related charges may be commenced and pursued without foreclosing, or in any way waiving, the Association's lien.

(e) The Association's lien foreclosure or attempted foreclosure does not preclude the Association from foreclosing its lien again for any subsequent delinquent Assessment or related charges. The Association may bid on or purchase any Lot at foreclosure or other legal sale, and acquire and hold, lease, mortgage, convey or otherwise deal with the Lot. If a lien foreclosure action is filed, and an Owner abandons or vacates their Lot, the Association may apply for the appointment of a receiver for the Lot without prior notice to the Owner. The Association's rights are expressly subordinate to the rights of any holder of a First Lien Holder as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent provided under the Act.

**Section 4.11 Budget and Common Expense Assessments.**

(a) Prior to the beginning of each fiscal year, the Association is to prepare a proposed budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of improvements that are the Association's responsibility, and establish the Common Expense Assessment or installments for the coming year.

(b) The Association is to deliver a summary of the proposed budget to each Owner within 90 days after adopting the proposed budget and set a date for an Association meeting to consider the proposed budget, which meeting is to occur within a reasonable time after delivery of the proposed budget summary.

(c) The proposed budget and the Assessments from it become effective unless disapproved at a duly called Association meeting by a majority of the total Association vote; provided, however, if a quorum is not obtained at the meeting called to ratify the budget, the budget is to become effective even though a vote to disapprove the budget could not be called at this meeting.

(d) If the membership disapproves a proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then until a new budget is determined, the budget in effect for the current year is to continue. In such a case, the Association may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets also apply to a new budget proposed by the Association.

(e) A ratified or approved budget does not operate as a limitation on expenditures by the Association, but, rather, the budget is merely an estimate of Common Expenses.

**Section 4.12 Special Assessments.** In addition to the Common Expense Assessment provided for above, the Association may, at any time, and in addition to any other rights it may have, propose a special Assessment against all Owners in accordance with the meeting and notice procedures set forth above. Any special Assessment (except as provided in this Declaration regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) is to become effective unless disapproved at a duly called Association meeting by a vote of 67% of the total Association membership; provided, however, if a quorum is not obtained at the meeting, the special Assessment is to become effective even though a vote to disapprove the special Assessment could not be called at this meeting. The special Assessment may be payable in installments, as determined by the Association, and/or may provide for a discount for a lump sum payment.

**Section 4.13 Working Fund.** Upon acquisition of a Lot, the new Owner must pay an amount equal to two times the monthly installment of the current Common Expense Assessment to the Association, which sum may be maintained in a segregated account and used to ensure that the Association has adequate funds available to meet unforeseen expenditures or may be used for regular operating expenses or to fund reserves. The working fund does not relieve an Owner from the obligation to pay the monthly installment of the Common Expense Assessment. Provided, however, the following conveyances shall be exempt from the Working Fund payment required by this section:

(a) a transfer by a co-Owner to another co-Owner;

(b) a transfer to the estate of an Owner, a transfer to the surviving spouse of an Owner or a transfer to child of an Owner following the Owner's death;

(c) a transfer to an entity wholly owned by the grantor, provided that, upon any subsequent transfer of an ownership interest in the entity, the Working Fund contribution becomes due;

(d) a transfer to a trust of which the Owner is the beneficiary; provided that upon any subsequent transfer of the Lot, the Working Fund contribution becomes due;

(e) a transfer in lieu of foreclosure or foreclosure of a deed of trust; provided that upon the subsequent transfer to a third party, the Working Fund contribution becomes due.

**Section 4.14 Statement of Account.** The Association is to furnish to an Owner or the Owner's designee or to a holder of a security interest or its designee a statement setting forth the amount of unpaid Assessments currently levied against the Owner's Lot. The Association is to deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party within 14 calendar days after the Association's registered agent receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in the statement, when signed by the Association's treasurer or

managing agent, if any, binds the Association, the Board, and every Owner as to the person or persons to whom the statement is issued and who rely on it in good faith. The Association may establish a reasonable fee relating to the statement, which may incorporate any fees imposed by a managing agent.

**Section 4.15 Surplus Funds.** Surplus funds from whatever source are to be applied to the payment of Common Expenses. Any funds remaining after application, at the option of the Association, are to be: (a) added to the Association's capital reserve account; (b) distributed to the Owners; or (c) credited to the next Assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Lot.

**Section 4.16 Borrowing.** The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Association vote present and exercised, in person or by proxy at a duly constituted meeting called for that purpose, or by ballot in lieu of a meeting as provided for in the Bylaws.

## **ARTICLE 5. MAINTENANCE RESPONSIBILITIES**

### **Section 5.1 Owner Maintenance Responsibilities.**

(a) Each Owner is obligated to maintain, repair, replace, improve and keep in good repair all portions of their Lot. This maintenance responsibility includes the responsibility to maintain, repair, replace or improve without limitation, all structures (e.g. home, outbuildings, walkways, fences, etc) to standards as set by the Board:

(b) In addition, each Owner has the responsibility:

(i) to keep the Lots in a neat, clean and sanitary condition, including keeping the improvements on the Lot free and clear of snow, ice, and any accumulation of water or other debris;

(ii) to perform their responsibility in a manner so as not to unreasonably disturb other persons in other Lots;

(iii) to promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(iv) to pay for the cost of repairing, replacing, or cleaning up any component of the Community which, although the responsibility of the Association or another Owner, is necessitated by reason of the is Owner, their family, tenants or guests, or negligent act of the Owner, their family, tenants or guests, with the cost to be added to the Owner's next Assessment;

(v) to repair incidental damage to another Lot or the Common Area, resulting from performance of work that is the Owner's responsibility. Such repair and subsequent cleaning is to be performed based upon a reasonableness standard.

(c) In addition, each Owner has the responsibility to decrease the possibility of fire or other damage in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Association in procuring or maintaining insurance coverage, the Association, by resolution, may require all or any Owner(s) to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility. This authority includes any measures as the Association may reasonably require so long as the cost of the work does not exceed three times the monthly Assessment of the Lot in any 12 month period.

(i) The Association's rights under this Section are in addition to, and not in limitation of, any other rights the Association may have. If any Owner does not comply with any requirement made by the Association pursuant to this Section, the Association, upon 15 days written notice (during which period the Owner may perform the required act or work without further liability), may perform the required act or work at the Owner's sole cost. The cost is to be added to and become a part of the Assessment to which the Owner is subject and is the personal obligation of the Owner and a lien against the Lot, and may be collected as provided in this Declaration for the collection of Assessments.

(ii) The Association has all rights necessary to implement the requirements mandated by the Association pursuant to this section, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Resident of the Residence, except that access may be had at any time without notice in an emergency situation.

(d) Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Resident which is the Association's responsibility (including, but not limited to landscaping of Common Elements) is performed at the Owner's or Resident's sole expense and the Owner or Resident is not entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

**Section 5.2 Fences and Owner Maintenance and Covenants.**

(a) Each fence built which serves and separates any two adjoining Lots or Residences is a party wall ("Party Fence"). The cost of maintenance, repair, alteration, improvement and replacement of each Party Fence is to be shared equally by the Owners of the Lots adjoining such Party Fence.

(b) The Owner's right to contribution from another Owner pursuant to this Declaration is appurtenant to the land and such rights and obligations pass to the Owners' successors in title.

(c) If a Party Fence is destroyed or damaged by fire or other casualty, any Owner whose Lot adjoins the Party Fence may repair or restore it, and the other Owner is to immediately upon receipt of written demand, pay their or her portion of such costs to the Owner making the restoration or repair.

(d) Regardless of the above terms and provisions, an Owner who by their negligent or intentional act causes the Party Fence to be exposed to the elements or damaged in any manner, bears the whole cost of furnishing the necessary protection against such elements or of making the necessary repairs or restoration.

(e) Penetrations for loud speakers or other improvements are prohibited.

(f) In the event of a dispute, the aggrieved Owner may seek redress personally and the Association is not obligated to enforce this section on any Owner's behalf.

(g) Prior to the construction or erecting of any Party Fence, the Owners of the Lots adjoining such Party Fence are encouraged to execute into a Fence Agreement documenting their agreement as to the maintenance, repair, insurance, and all other issues that may arise from the existence of a Party Fence and file such Agreement with the Association which Agreement shall control the relationship of the parties even if it conflict herewith.

**Section 5.3 Maintenance Standards and Interpretation.** The maintenance standards and enforcement and interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce

maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

**Section 5.4 Liability for Damage.**

(a) The Association is to repair incidental damage to any Lot resulting from performance of work that is the Association’s responsibility. The repair and subsequent cleaning is to be performed based on a reasonableness standard. In performing its responsibilities, the Association has the authority to delegate any of its duties.

(b) The Association is not liable for injury or damage to person or property caused by any other person, or resulting from any utility, rain, snow or ice that may leak or flow from any portion of the Areas of Common Responsibility except for injuries or damages arising after the Owner notified the Association of a specific leak or flow and the Association failed to exercise due care to correct the leak or flow. For example, the Association is not liable for mold in the Residence resulting from an unreported leak. The Association is not liable for any damage or injury caused in whole or in part by the Association’s failure to discharge its responsibilities under this article where the damage or injury is not a foreseeable, natural result of the Association’s failure to discharge its responsibilities.

**Section 5.5 Mold and/or Mildew.** Mold and Mildew can grow in any portion of the Community that is exposed to a regular source of moisture. Therefore, the Association and the Owners agree to: (a) promptly investigate to determine the source of the problem and the extent of the condition upon the discovery of any water leaks; (b) repair any leaks in their respective areas of maintenance responsibility in a good and workmanlike condition; (c) ensure that any building material which has absorbed water or moisture as a result of a water leak and has not been completely dried as part of the repair of the water or moisture damage is removed and replaced; and (d) clean any area where mold and/or mildew appears with industry-accepted product designed to inhibit the growth of mold and/or mildew.

**Section 5.6 Environmental Protection Agency.** The U.S. Environmental Protection Agency (“EPA”) states that exposure to elevated levels of radon gas can be injurious. Any test to measure the level of radon gas can only show the level at a particular time under the circumstances occurring at the time of testing. Owners may wish to test for the presence of radon gas and to purchase or install devices that may be recommended by qualified radon specialists. If the devices require exterior modifications to the Residence, prior written consent in accordance with the terms of this Declaration is required. Each Owner agrees to hold the Association harmless from any claim or liability with respect to radon gas and related matters.

**Section 5.7 Inspection, Maintenance, Repair and Replacement of High-Risk Components.**

(a) The Association may, from time to time, after notice to all Owners and an opportunity for comment, determine that certain portions of the Lots required to be maintained by the Owners, or certain objects or appliances within the Lot, pose a particular risk of damage to other Lots and/or the Common Area if they are not properly inspected, maintained, repaired or replaced. For example, but not limitation, these portions, objects or appliances might include smoke detectors, water heaters and washing machine hoses. Those items determined by the Association to pose a particular risk are referred to herein as “High-Risk Components.”

(b) At the same time that it designates a High-Risk Component, or at a later time, the Association may require one or more of the following with regard to the High-Risk Component: (i) that it be replaced or repaired at specified intervals, or with reference to manufacturers’ warranties, whether or not the individual component is deteriorated or defective; (ii) that it be replaced or repaired with items or components meeting particular standards or specifications established by the Association; (iii) that when it is repaired or replaced, the installation include additional components or installments the Association specifies; (iv) that it be replaced or repaired by contractors

having particular licenses, training or professional certification or by contractors approved by the Board; and (v) if the replacement or repair is completed by an Owner, that it be inspected by a person designated by the Association.

(c) The imposition of requirements by the Association in this provision is to not relieve an Owner of their obligations regarding High-Risk Components, including, but not limited to, the obligation to perform and pay for all maintenance, repairs and replacement thereof.

(d) If any Owner fails or refuses to maintain, repair or replace a High-Risk Component in accordance with the requirements established by the Association, the Association may, in addition to all other rights and powers granted to it pursuant to the Governing Documents, enter the Lot to inspect, repair, maintain, or replace the High-Risk Component, as the case may be, and charge all costs of doing so back to the Owner as a specific Lot Assessment.

### **Section 5.8 Failure to Maintain.**

(a) If the Association determines that any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair, replacement or improvement of items for which he is responsible, then it may give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide the necessary work at the Owner's sole cost and expense. The notice is to set forth with reasonable particularity the maintenance, repair, or replacement the Association deems necessary.

(b) Unless the Association determines that an emergency exists, the Owner is to have ten days to complete the work, or if the work is not capable of completion within this time period, to commence replacement or repair within ten days. If the Association determines that: (a) an emergency exists, or (b) that an Owner has not complied with the demand given by the Association, then the Association may perform the maintenance, repair, or replacement at the Owner's sole cost and expense, and the costs is to be added to and become a part of the Assessment to which the Owner is subject, is to become the personal obligation of the Owner and a lien against the Lot, and is to be collected as provided in this Declaration for the collection of Assessments.

## **ARTICLE 6. ARCHITECTURAL CONTROLS**

**Section 6.1 Architectural Review Committee.** The Architectural Review Committee ("ARC") consists of three or more persons appointed by the Declarant. This appointment authority of the Declarant lasts for until the sooner of i) the expiration of the Declarant period; or, ii) until assigned by the Declarant to the Association. Upon either of those events, the members of the ARC are then to be appointed by the Board of Directors, who may then determine terms of office, fill vacancies, and may remove committee members, with or without cause. Prior to either of these events, the Declarant may determine terms of office, fill vacancies, and may remove committee members, with or without cause. If the Board of Directors does not appoint committee members, the Board is to serve as the ARC. The ARC may propose design guidelines from time to time, subject to the Board approval.

**Section 6.2 Architectural Covenants.** An Owner, Resident, or any other person may not, without first obtaining the Association's written approval:

(a) make any Improvement, exterior change, alteration, or construction (including painting, landscaping, penetrations and cutouts) to the Residence or Lot; or

(b) make any encroachment onto the Common Areas.



**Section 6.3 Alteration of Lot Boundaries.** Subject to the provisions of the Act and other provisions of this Declaration, combination of Lots, relocation of the boundaries between adjoining Lots, and subdivision of Lots are subject to the following restrictions:

(a) Combining Lots. If any Owner acquires an adjoining Lot, he is to have the right (subject to the prior written approval of the Mortgage Holders involved) to combine the Lots in accordance with Section 211 (1) (c) of the Act, but no additional building site may be created.

(b) Relocation of Lot Boundaries. Relocation of boundaries between Lots is prohibited.

(c) Subdivision of Lots. Subdivision of Lots into smaller Lots is prohibited.

**Section 6.4 Architectural Standards.** Interpretation, application and enforcement of the architectural standards may vary as members of the ARC change. The standard for approval of improvements includes, but is not limited to: (a) aesthetic consideration; (b) materials to be used; (c) compliance with standards of the Community, this Declaration, or the design guidelines which may be adopted by the Association, if any; (d) harmony with the external design of the existing Residences, Lots and structures, and the location in relation to surrounding structures and topography; (e) visibility and location of the proposed modification in the Community; and (f) any other matter the ARC deems to be relevant or appropriate.

**Section 6.5 Authority of Association to Engage Consultants.** The Board has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed. The cost of any consultants are to be paid by the submitting Owner, whether or not the application is approved. Prior to incurring consultant costs, the Association is to notify the Owner of its belief that review and/or inspections by consultants are necessary. The Owner is to then have the right to withdraw the submission. The Association may require payment of costs prior to review.

**Section 6.6 Encroachments onto Common Areas.** The Board may provide written consent to allow an Owner to make encroachments onto the Common Areas as it deems acceptable. Any unauthorized exterior change, alteration or construction (including landscaping) upon the Common Area is at the Owner's sole cost and expense. The Association may require that any unapproved change, alteration or construction be removed from the Common Area or that it remain on the Common Area without reimbursement to the Owner for any expense incurred in making the change, alteration or construction.

**Section 6.7 Conditions of Approval.** As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself and their successors-in-interest, assumes all responsibilities for maintenance, repair, replacement and insurance of the change, modification, addition, or alteration, unless the Association otherwise agrees in writing. As a further condition of approval, an Owner may be required to execute an agreement setting forth the conditions of approval to be recorded in the Archuleta County real property records.

**Section 6.8 Required Action by the ARC.** The Association is the sole arbiter of the application and may withhold approval for any reason, including purely aesthetic considerations, provided the Association's decision may not be arbitrary or capricious. Applications for approval of architectural modifications must be in writing and provide any information the Association reasonably requires. If the Association fails to approve or to disapprove the application within 45 days after the application and all required supplemental information have been submitted, then the submitting Owner may send written notice to the Association's president and the Association's managing agent, regarding the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten days of receipt of the Owner's notice, this

section's requirements are satisfied and the approval is not required as to the items specifically identified in the application. No Owner may construct or maintain any structure or improvement that otherwise violates the Declaration, the design guidelines, or the Rules and Regulations, or any applicable governmental requirements or laws.

**Section 6.9 Right to Appeal.** If the Board is not acting as the ARC, the applicant may appeal any decision of the ARC to the Board within 20 days of the decision. The Board is to review the ARC's decision pursuant to the criteria set forth in this article and the architectural guidelines, if any. Any decision of the ARC may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the ARC's decision was inconsistent with the criteria set forth in this article and/or the guidelines.

**Section 6.10 Variances.** The Association may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration to overcome practical difficulties and unnecessary hardships with respect to topography, natural obstructions or aesthetic or environmental considerations arising from application of conditions and restrictions contained in the Declaration or in any design guidelines, provided that such variance is not materially detrimental or injurious to other Lots or the Common Areas and is based on unique circumstances. All variances is to be in writing. 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 is to not be considered a hardship warranting a variance.

**Section 6.11 Commencement and Completion of Construction.** All changes, modifications and improvements to existing structures approved by the Association must be commenced within six months from the date of approval unless the Association otherwise agrees. If not commenced within this time, then approval is to be deemed revoked, unless the Association gives a written extension for commencing the work. All work approved by the Association must be completed in its entirety within 90 days from the date of commencement, unless the Association otherwise agrees in writing. All approved changes, modifications, and improvements must be completed in their entirety.

**Section 6.12 Limitation of Liability.** Neither the Association nor its directors, officers, committee members or agents is to bear any responsibility for the design, quality, structural integrity or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its directors, officers, committee members, and agents are not liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Lot. No lawsuit, action or claim may be brought against any of the foregoing for any injury, damage or loss.

**Section 6.13 No Waiver of Future Approvals.** The Association's approval of any proposals and applications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals and applications.

**Section 6.14 Enforcement.** The Association is entitled to stop any construction that does not conform to the approved plans. The Association is further entitled to stop any construction if the Owner fails to submit plans and specifications and/or obtain written approval prior to commencing construction. The Association may require any Owner to remove any improvement or modification, whether partial or completed, and restore the property to its prior condition, if the Owner fails to obtain prior written approval or constructs in a manner that does not conform to the approved plans. These remedies are in addition to all remedies available, including the authority to levy a fine.

**ARTICLE 7. COVENANTS AND USE RESTRICTIONS**

**Section 7.1 General terms on Covenants and Restrictions of this Declaration.** All Real Estate within the Community is held, used and enjoyed subject to the covenants, limitations and restrictions of this Declaration, including as set for in this Article. The strict application of the covenants, limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board or by an appropriate committee (subject to review by the Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or in Rules and Regulations. All covenants, limitations and use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by Declarant.

**Section 7.2 Owner Responsibility for Compliance.** Each Owner is responsible for ensuring that the Owner's family, guests, and Residents comply with all provisions of the Governing Documents. Each Owner and Resident is to endeavor to observe and promote the purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, or Residents as a result of the person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner.

**Section 7.3 Use of Lots and Residences.**

**(a) Occupancy, Residential and Business Use Covenants and Restrictions.**

(i) Except as provided below, each Residence and Lot is to be used primarily for residential purposes. No trade or business of any kind may be conducted in or from a Lot or any part of the Community, except that the Owner residing in the Residence, or the Resident, may conduct ancillary business activities within the Lot so long as the business activity:

a. is not apparent or detectable by sight, sound, or smell from outside of the Lot;

b. does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a Residence without business activity;

c. is legal and conforms to all zoning requirements;

d. does not increase traffic in the Community in excess of what would normally be expected for Residences in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other similar delivery services);

e. does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

f. is consistent with the Community's residential character, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Residents, as determined by the Association; and

g. does not result in a materially greater use of Common Area or Association services.

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h. the trade, business or home occupation must be permitted under the zoning ordinances of all applicable governmental jurisdictions.

(i) The terms “business” and “trade,” as used in this section, have their ordinary, generally accepted meanings, and include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

(b) Occupancy. If an Owner is a corporation, partnership, trust or other legal entity the entity is to designate in writing to the Association the name(s) of the natural person(s) who is to occupy the Lot. The designated person(s) to occupy the Lot may not be changed more frequently than once every 12 months without the express written consent of the Association. The maximum number of Residents is limited to two people per bedroom as the bedrooms were originally constructed, unless otherwise required by the Fair Housing Amendments Act of 1988, as amended.

(c) No activities shall be conducted which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the forgoing, no firearms shall be discharged, no exploding fireworks shall be set off and no open fires shall be lighted or permitted except in a contained barbeque unit, indoor or outdoor fireplace or fire pit which is attended. Trash, leaves and other similar materials shall not be burned.

(d) Short-term Rentals: Notwithstanding anything to the contrary herein, any residence or Lot may be used as a short-term or vacation rental provided all Ordinances, Rules and Regulations promulgated from time to time by the Town of Pagosa Springs are complied with.

**Section 7.4 Leasing.** The Community is intended to be an owner-occupied community. However, any Owner has the right to lease or allow occupancy of a Lot upon terms and conditions the Owner deems advisable, subject to restrictions of this Declaration, any other restrictions of record, and the following:

(a) “Leasing” for the purposes of this Declaration is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner, with or without consideration. For the purposes of this Declaration, occupancy by not more than one roommate of an Owner who occupies the Lot as their primary residence does not constitute leasing under this Declaration.

(b) Leases are to be for or of the entire Lot.

(c) All leases are to be in writing and shall provide that the lease is subject to the Governing Documents. The Association has the authority to require a particular lease form or addendum to implement the provisions of this section. Owners are required to provide Residents with copies of the current Declaration and Rules and Regulations.

(d) Each Owner who leases their Lot is to provide the Association, upon request, a copy of the current lease (lease amount may be redacted) and tenant information, including the names of all Residents, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) All leases shall state that the failure of the Resident or guests to comply with the Governing Documents is a default of the lease and this Declaration.

(f) All leases are subject to the Association's right to remove and/or evict the Resident for failure to comply with the Governing Documents. If the Association requests that the Owner evict the Resident, and the Owner fails to commence action within 30 days of the date of the Association's written request and notice, the Association may commence eviction proceedings. If Owner fails to comply with the request to evict, the Owner delegates and assigns to the Association the power and authority to evict the Resident as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the Resident, any costs, including but not limited to attorney fees incurred and court costs associated with the eviction, is to be an Assessment and lien against the Lot.

(g) All Owners who reside at a place other than the Lot is to provide to the Association an email address, physical address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. The Owner is solely responsible to keep this information current.

(h) If a Lot is leased or occupied in violation of this section or if the Owner or Resident violates the Governing Documents, the Association is to be authorized, in addition to all other available remedies, to levy fines against the Resident and/or Owner, and to suspend all voting and/or recreational facilities use privileges.

**Section 7.5 Use of Common Area.** There is to be no obstruction of the Common Areas, nor is to anything be kept, parked, or stored on or removed from any part of the Common Areas without the Association's prior written consent, except as specifically provided for in the Governing Documents. The Association may remove unattended personal property from the Common Areas. The Association is to not be liable to the Owner or their Residents, guests, family members and invitees, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Area. Use of the Common Area is subject to the Rules and Regulations.

**Section 7.6 Reasonable Rights to Develop.** No action of or failure to act, rule or other means may be used by the Association or Board to unreasonably impede the Declarant's right to develop in accordance with the Plat, any Map and this Declaration.

**Section 7.7 Use of Porches, Patios, Decks or Balconies.** Front porches and sidewalks are to remain clear and unobstructed. Objects other than potted plants and patio furniture, except as the Association may authorize, is to not be placed on a porch, patio, deck or balcony. Objects are not be permitted to hang over or be attached to any fence, railing or wall or otherwise protrude above or outside the vertical plane formed by the exterior surface of the fence, railing or wall.

**Section 7.8 Use of Garages and Assigned Parking Spaces.** Garages and Limited Common Element parking spaces are to be used primarily to park vehicles. As a secondary use, a garage space may also be used to store any other personal property belonging to the Owner or Resident. Garages may not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of in the garage, or if the garage becomes contaminated in any manner for which the Owner or Resident thereof is legally liable, Owner or Resident is to indemnify and hold harmless the Association and Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorney's fees, consultant and expert fees, arising as a result of that contamination by Owner or Resident.

**Section 7.9 Compliance with Laws and Insurance Requirements.** Nothing may be done or kept in the Community, or any part thereof, that would increase the rate of insurance on the Community or any Lot or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

**Section 7.10 Prohibition of Nuisance.**

(a) Noxious, destructive, offensive or unsanitary activities may not be carried on within the Community. No Owner or Resident may use or allow the use of the Lot or any portion of the Community at any time, in any way, that may endanger persons or property, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Residents, or constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Residents a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment.

(i) The intention of this provision is to grant the Association and aggrieved Owners and Residents a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment by Owners and Residents. Nothing in this section is to be construed to affect the rights of an aggrieved Owner or Resident to proceed individually against a violator hereof for relief from interference with their property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise is to exist by an aggrieved Owner or Resident against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Resident has not personally pursued all available remedies against the violator for redress provided under Colorado law.

(b) Specific unauthorized and unreasonable annoyances or disturbances is to include, but are not limited to, the following:

(i) fighting, screaming, shouting, excessively loud talking, or playing music or television, raucous behavior or insobriety either outside a Lot at any time or within a Residence if the conduct can be heard in another Residence;

(ii) using any alarm, equipment, or device, mechanical or otherwise, that creates or produces excessively loud sounds or any vibrations either outside a Residence at any time or within a Residence if the sounds can be heard or vibrations felt in another Residence;

(iii) threatening or intimidating conduct towards any Resident, guest or pet in the Community;

(iv) conduct that creates any danger or risk of injury to others or damage to property in the Community;

(v) conduct that creates any noxious or offensive odor if the odors can be detected in another Lot;

(vi) incessant or excessive pet noises, including dog barking, if the conduct can be heard in another Residence;

(vii) construction or similar activities on a Lot that can be heard within another Residence between the hours of 9:00 p.m. and 6:30 a.m.;

(viii) similar action or activity that interferes with the peaceful use and enjoyment of another Lot or the Common Areas by any other Owner, members of their family, guests, invitees, or Residents; or

(ix) using or allowing the use of the Lot or the Common Areas in any manner that creates noise between the hours of 11:00 p.m. and 7:30 a.m. that can be heard in another Lot that is to unreasonably interfere with the rights, comfort or convenience of any other Owner, members of their family, guests, or Residents.

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**Section 7.11 No Damage or Waste.** No Owner or agent of either may do any work that would jeopardize the soundness or safety of any structure within the Community or would impair any easement or other interest in the Community. Damage to or waste of any portion of the Common Areas is prohibited. Each Owner and Resident is to indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any damage or waste caused by the Owner or Resident, or the Owner's or Resident's guest, family member or invitee.

**Section 7.12 Pets.**

No animals, including, but not limited to, livestock, poultry, or reptiles shall be raised, bred or kept within the Community except as hereinafter provided.

(a) An Owner or Resident may keep two (2) generally recognized household pets in the Residence or on a Lot.

(b) A reasonable number, not to exceed three (3) of household pets weighing less than two pounds each may also be kept.

(c) No pot-bellied pigs, venomous snakes, or other animals determined in the Association's sole discretion to be dangerous animals may be brought into or kept in the Community at any time.

(d) The Association may adopt additional Rules and Regulations to supplement this section.

(e) No Owner or Resident may keep, breed or maintain any pet for any commercial purpose.

(f) No structure for the care, housing, or confinement of any pet may be constructed or maintained on any part of the Common Elements, including Limited Common Elements.

(g) Dogs must be kept on a leash and be under the physical control of a responsible Person at all times while on the Common Elements; provided, however, dogs need not be leashed when within fenced patio or deck areas when attended.]

(h) Feces left by pets upon the Common Elements, Limited Common Elements, or in Lots, including the pet owner's Lot, must be removed promptly by the pet Owner or other Person responsible for the pet.

(i) Following notice and an opportunity for a hearing, the Association may require that any pet which, in its opinion, endangers the health of any Owner or Resident or creates a nuisance or unreasonable disturbance, be permanently removed from the Community upon ten days written notice.

(j) Any Owner or Resident who keeps or maintains any pet within the Community is deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining the pet within the Community.

**Section 7.13 Vehicles and Parking.**

(a) General. Parking is subject to the Rules and Regulations adopted by the Board. Each Lot must have one two-vehicle garage. No garage is to be used for storage if doing so prevents its use for parking the number of vehicles it is designed to hold.

(b) **Prohibited Vehicles.** Boats, trailers, jet-skis and trailers for same, oversized trailers, hauling trailers, pickup trucks over 1 ton, panel trucks, buses, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles), recreational vehicles (as may be defined in the Rules and Regulations), commercial vehicles (as may be defined in the Rules and Regulations)] are prohibited, unless parked wholly within a garage if they can be enclosed with the garage door closed.

No unlicensed vehicles may be parked on the Common Areas. No stored or abandoned or inoperable vehicles of any kind may be stored or parked on the Common Areas. An “abandoned or inoperable vehicle” is defined as any passenger car, truck, motorcycle, boat, trailer, camper house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which for a period of two days or longer, does not have an operable propulsion system installed therein, has one or more flat tires or has another condition preventing the regular and normal operation and movement of the vehicle. A vehicle is to be considered “stored” if it remains in the same location in the Community for 7 consecutive days or longer without prior written Board permission.

(c) **Enforcement.** If any vehicle is parked on any portion of the Community in violation of this section or in violation of the Rules and Regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice is to include the name and telephone number of the person or entity that is to do the towing. If 24 hours after such notice is placed on the vehicle the violation continues, or occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle located in the Community is blocking another vehicle or access to another Owner’s parking space or garage], is obstructing the flow of traffic, is parked on any grassy area, blocks access to the trash enclosure, is parked in a designated handicapped space without the proper state-issued identification, is parked within 30 feet of US Postal Service mailboxes, or otherwise creates a hazardous condition, no notice is to be required and the vehicle may be towed immediately in accordance with the governmental regulations.

If a vehicle is towed in accordance with this section, neither the Association nor its directors, officers or agents is to be liable to any person for any claim of damage resulting from the towing. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

**Section 7.14 Vehicle Repair.** Maintenance, repair, rebuilding, dismantling, repainting, or any kind of servicing of vehicles, trailers or boats may not be performed or conducted in the Community unless done within completely enclosed structures that screen the sight and sound of the activity from the street and from adjoining property. This restriction does not prevent washing and polishing of any motor vehicle, boat, or trailer, together with those activities normally incident and necessary to washing and polishing.

**Section 7.15 Heating of Residences in Colder Months.** To prevent water pipes from breaking during colder months of the year resulting in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Residences must be maintained with the heat in an “on” position and at a minimum temperature setting of 55° Fahrenheit (except during power failures or periods when heating equipment is being repaired) whenever the temperature is forecasted to or does reach 32° Fahrenheit or below. Owners and Residents must take all reasonable steps on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the colder months when the heating equipment is not working properly, the Owner or Resident must immediately inform the Association of the equipment’s failure and of the time needed to repair the equipment. The Association may fine any Owner up to three times the Lot’s monthly Assessment for violating this section, in addition to any other remedies of the Association.



**Section 7.16 Signs.** Except as provided for in this Declaration or as required by state law or legal proceedings, no signs, advertising posters, political placards or billboards of any kind may be erected, placed, or permitted to remain in the Community without the Association’s prior written consent. The following signs are permitted:

(a) one professional security sign not to exceed six inches by six inches in size may be displayed

(b) one professionally lettered “For Rent” or “For Sale” sign not to exceed two feet by two feet in size may be displayed on a Lot, actively being offered for sale or for lease; and

(c) political signs as allowed by State and local law.

(d) The Association has the right to erect reasonable and appropriate signs on its behalf.

**Section 7.17 Trash and Garbage.** All trash and garbage must be regularly removed from the Residence and is to not be allowed to accumulate on the Lot. Trash or garbage must not be placed on the Common Areas temporarily or otherwise. Trash and garbage must be disposed of in appropriate sealed bags and either placed in proper receptacles designated by the Association for collection or removed from the Community. Trash cans may be placed outside for pick-up not earlier than the evening prior to the day of pick-up and is to be removed by evening on the day of pick-up.

**Section 7.18 Unsightly or Unkempt Conditions.** Activities that cause disorderly, unsightly, or unkempt conditions, must not be pursued or undertaken on any part of the Common Areas.

**Section 7.19 Antennas and Satellite Dishes.** Subject to compliance with Federal, State and Municipal laws, no more than two (2) Satellite dishes, antennae or other devices for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation may be attached to a structure. However, the Association has the right to erect, construct and maintain these devices on the Common Areas. The Association may adopt Rules and Regulations regarding installation and location of permitted antennas, satellite dishes or other such devices subject to limitations of federal law.

**Section 7.20 Personal Property on Common Elements.** Personal property (other than vehicles as otherwise permitted in this Declaration) may not be stored, kept, or allowed to remain for more than 24 hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Association permission. If the Association determines that a violation exists, then, after two days written notice is placed on the personal property and/or on the front door of the property owner’s Lot, if known, the Association may remove and either discard or store the personal property in a location which the Association or its agent may determine. Neither the Association nor its agent has any obligation to return, replace or reimburse the owner of the property. The notice is to include the name and telephone number of the person or entity who is to remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Association, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner. In this case, the Board is to give the property owner, if known, notice of the removal of the property and the location of the property within three days after the property is removed.

Neither the Association nor its directors, officers or agent is to be liable to an Owner or Resident, guest, or family, for loss or damage, by theft nor otherwise, of any property which may be stored in or upon any of the Common Elements or for any claim of damage resulting from the removal activity in accordance with this section. The

Association may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

**Section 7.21 Restriction on Marijuana Use, Growth and Distribution.** Except for the growth and use of medical marijuana for personal use by the Resident as permitted by Colorado law, no Owner, Resident or other Person may use the Lot or any portion of the Lot for the use of marijuana by any means or for the purpose of growing or distributing marijuana. No Owner or Resident may grow medical marijuana for another person who is not a Resident. No Lot may be used for the production or use of hash oil, whether for personal use or distribution. The restrictions in this section may be further clarified by the Board through Rules and Regulations. Owners is to be responsible for any costs or damages resulting from a violation of this section.

**Section 7.22 Rules and Regulations.** The Association may adopt, amend and repeal Rules and Regulations concerning and governing the Lots or a Residences, Common Elements and Limited Common Elements in furtherance of the provisions of this Declaration, subject to the following:

(a) Uniformity/Equal Treatment. The Rules and Regulations, Policies and Procedures and Governance Policies are to be reasonable and uniformly applied. Similarly situated Owners and Residents must be treated similarly.

(b) Copies. Copies must be made available to each Owner and Resident upon request.

(c) Required Compliance. Each Owner and Resident must comply with the Rules and Regulations, Policies and Procedures and Governance Policies.

(d) Authority of the Rules and Regulations. The Rules and Regulations, Policies and Procedures and Governance Policies have the same authority, force and effect as if they were stated in full in this Declaration. In the event of conflict this Declaration prevails.

(e) Speech/Political Signs. The rights of Owners or Residents to display political signs and symbols in or on their Lots or a Residences of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods must not be abridged. The Association may adopt (as allowed by statute and law) reasonable size, time, place, and manner restrictions for the purpose of minimizing damage, disturbance, clutter, and unpleasant aesthetics.

(f) Religious and Holiday Displays. The rights of Owners and Residents to display religious and holiday signs, symbols, and decorations normally displayed in residences located in single-family residential neighborhoods must not be abridged. The Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage, disturbance, clutter, and unpleasant aesthetics.

(g) Activities within Residences. No rule may interfere with the activities carried on within the confines of Residences, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Residences, that generate excessive noise, odor or traffic, that create unsightly conditions or conditions otherwise disallowed by this Declaration which are visible outside the Residence, that block the views from other Residences, or that create an unreasonable source of annoyance.

**Section 7.23 Use of the words River Rock Estates, River Rock Estates Community, and River Rock Estates Homeowners Association.** Without the Association's prior written consent, Owners or Residents is to not use the words River Rock Estates, River Rock Estates Community, River Rock Estates Homeowners Association, or the

logo of the Community or Association, if any, or any derivative thereof, if use is likely to cause confusion, mistake or deception, in the Association's sole discretion.

**Section 7.24 Preferred Builders.** In order to maintain consistency, appearance and the desired esthetic effects of River Rock Estates, any initial construction or any exterior improvement costing Fifteen Thousand Dollars (\$15,000.00) or more, of or to any structure within River Rock Estates shall be constructed or improved only by one of the contractors identified in the River Rock Estates Construction Standards Agreement as that Agreement may be amended from time to time. Provided, however, the Board may grant an exception from this Preferred Builders restriction if the Board passes a written Board Resolution which Resolution specifies how:

- 1) providing such relief may be granted without substantial detriment to the goal of maintaining consistency, appearance and the desired esthetic effects of River Rock Estates.

## **ARTICLE 8. INSURANCE**

**Section 8.1 Other Association Insurance.** In addition to the insurance required above, the Association is to obtain as a Common Expense:

- (a) Workers' compensation insurance if and to the extent necessary to meet the requirements of law;
- (b) General liability insurance in amounts no less than \$1,000,000. The general liability insurance policy is to contain a cross liability endorsement;
- (c) Directors' and officers' liability insurance in such amounts as the Board may determine.
- (d) Fidelity insurance covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds in an amount required by law, or if no such requirement, consistent with the Board of Directors' best business judgment; and
- (e) Other insurance as the Board of Directors may determine necessary or desirable.

### **8.2 Standards for Association Policies.**

- (a) The Association is to use reasonable efforts to obtain policies that provide the following:
  - (i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Areas or membership in the Association;
  - (ii) The insurer's waiver of subrogation of claims against directors, officers, the managing agent, the individual Owners and their respective household members;
  - (iii) No act or omission by any Owner not under the Association's control is to void the policy or be a condition to recovery under the policy;
  - (iv) Ordinance or law coverage, demolition cost coverage and increased cost of construction coverage;
  - (v) Any "other insurance" clause contained in the master policy is to expressly exclude individual Owners' policies from its operation;

(vi) The master policy may not be canceled, substantially modified, or subjected to non-renewal without at least 30 days prior notice in writing to the Association and all Mortgage Holders, except in instances of nonpayment of premiums, which is to require at least ten days' prior written notice;

(vii) The casualty insurance may not contain a "co-insurance" provision;

(viii) All insurance policies of the Association are primary over other insurance in the Owner's name;

(ix) An inflation guard endorsement.

(b) All insurance policies is to be written with a company licensed to do business in Colorado. The company is to provide insurance certificates to each Owner and Mortgage Holder upon request. The Association's Board of Directors has the exclusive authority to adjust losses under the Association's policies. No Mortgage Holder having an interest in any losses may be prohibited from participating in the settlement negotiations, if any.

(c) The Association's insurance is not required to include liability insurance for individual Owners for liability arising within the Lot.

**Section 8.3 Insurance Deductibles.** Unless otherwise specified in written guidelines or a written Board resolution, any required deductible on the Association's policy is to be a maintenance expense to be paid by the person(s) who would be responsible for the repair or maintenance of the loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Areas, the Board may equitably apportion the cost of the deductible among the parties suffering loss in proportion to the total cost of repair. However, if the insurance policy provides that the deductible is to apply to each Lot separately or to each occurrence, each Owner is to be responsible for paying the deductible pertaining to their or her Lot, if any. If any Owner(s) fails to pay the deductible required under this section, the Association may pay the deductible and assess the cost to the Owner pursuant to Article 5 of this Declaration.

#### **Section 8.4 Owners' Insurance.**

(a) Each Owner is also responsible for insuring all improvements on their Lot or to the Limited Common Elements or Common Elements added by the Owner or the Owner's predecessors-in-title.

(b) Each Lot Owner is also responsible for obtaining insurance covering their personal property and coverage for liability arising within their Residences and on their Lot or within the Limited Common Elements.

(c) The Association has no liability for failure to maintain required insurance.

(d) Upon request, the Owner is to furnish a copy of such insurance policies to the Association.

**Section 8.5 Owner's Right to Review Association Insurance Policies.** The Association is to make a copy of its insurance policies available for review by Owners to assess their personal insurance needs. Each Owner has the right to obtain additional coverage at their own expense.

**Section 8.6 Source and Allocation of Proceeds.** If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair (due to failure of the Association to maintain coverage as provided in this Declaration, or due to the insurance policy's deductible), the additional cost is to be a Common Expense. If, for any other reason, the insurance proceeds are not sufficient to defray the costs of reconstruction and repair, as determined by the Association, the additional costs is to be assessed against the Owners of the Lot(s) damaged in proportion to the damage to the Lots or against all Owners, in the case of insufficient funds to cover damage to the Common Areas

or Areas of Common Responsibility. These Assessments are not considered special Assessments as provided in this Declaration. If there are surplus funds after repair and reconstruction is completed, those funds is to be common funds of the Association to be used as directed by the Association.

**Section 8.7 Repair and Reconstruction Requirements.** In the event of damage to or destruction of all or any part of the Community as a result of fire or other casualty, the Association is to arrange for and supervise the prompt repair and restoration of the structure unless Owners holding at least 67% of the total Association vote, including the Owner(s) of any damaged Lot(s) and Mortgage Holders that represent at least 51% of the votes of Lots that are subject to mortgages held by Mortgage Holders, vote not to proceed with the reconstruction and repair of the structure. In the event of substantial damage or destruction, each holder of a first Mortgage is to be entitled to written notice of the damage, and nothing in these documents is to be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Lot.

**Section 8.8 Claims and Adjustments by the Association.** Any loss covered by an Association insurance policy is to be adjusted by the Association. The insurance proceeds for a loss is payable to the Association and not to any First Lien Holder. The Association holds any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.

**Section 8.9 Construction Fund.** The net insurance proceeds collected on account of a casualty and the funds collected by the Association from Assessments against Owners on account of the casualty is to constitute a construction fund. The Association is to use and disburse the funds to pay the cost of reconstruction and repair in appropriate progress payments to the contractor(s), supplier(s), and personnel performing the work or supplying materials or services.

**Section 8.9 Condemnation and Property Insurance Allocations and Distributions.** In the event condemnation proceeds or property insurance proceeds are distributed to the Owners, the distribution must be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

**Section 8.10 Managing Agent's Insurance.** The managing agent, if any, must maintain insurance for the benefit, and must maintain and submit evidence of coverage to the Association. Insurance must include professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage (unless the Association otherwise provides fidelity coverage).

## ARTICLE 9. DEVELOPMENT RIGHTS OF DECLARANT

**Section 9.1 Development Rights and Special Declarant Rights.** The Declarant reserves, through 30 years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

(a) the right to relocate boundaries between adjoining Lots owned by the Declarant, enlarge Lots, reduce the size of Lots, subdivide Lots owned by Declarant or complete or make improvements, as the same may be indicated on Maps or Plats filed of record;

(b) the right to enlarge or reduce the Common Elements and to create additional Lots;

(c) the right to add property adjacent to the Real Estate, with the consent of that Owner of that Real Estate and hereby incorporated by reference and additional unspecified Real Estate according to the provisions of this Declaration subject to the limitations set forth in this Declaration and/or the Act;

(d) the right to exercise any additional reserved right created by any other provision of this Declaration;

(e) the right to amend the Declaration to add unspecified Real Estate in accordance with the provisions of this Declaration or the Act;

(f) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;

(g) the right to amend the Declaration in connection with the exercise of any development right;

(h) the right to appoint or remove any officer of the Association or any Director during Declarant Control;

(i) the right to make amendments to this Declaration or the other Governing Documents to meet or comply with any requirements of any lender to an Owner;

(j) the right to amend the Maps or Plats in connection with the exercise of any development right;

(k) the right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA; and

(l) the right to use and to permit others to use, easements through the Common Elements, as may be reasonably necessary;

(m) other rights as determined

(n) In the rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the real property records of the County of Archuleta.

**Section 9.2 Additional Reserved Rights.** In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) Sales. The right to maintain mobile and other sales offices, parking lots, management offices and models on Lots of the Declarant.

(b) Signs. The right to maintain signs and advertising at the Community and to advertise the Community or other communities developed or managed by or affiliated with Declarant.

(c) Construction Easement. Declarant and its assignees expressly reserve to itself the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Lots and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

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

(e) Access Easement. Declarant and its successors and assigns shall have an access easement to and from any real property accessible through the Community.

(f) Formation of Metropolitan District(s). Declarant and its successors and assigns shall have the right to create one or more Metropolitan Districts and to dedicate to such District(s) the title and control over certain common elements or other services required by or part of the Community (e.g. roads, trails, water). Any Owner or holder of a security interest in any property in the Community shall be deemed to have consented to the formation of any such Metropolitan District as deemed by Declarant to be in the best interests of the community and shall execute all documents necessary to give effect to the formation of any such Metropolitan District(s). Provided further such Metropolitan Districts shall have all rights afforded such districts under the laws of the State of Colorado and may contract with the Association, Declarant or any entity controlled by Declarant.

(g) Ditch Company. Declarant has separated and not transferred any water rights to Association. Declarant and its successors and assigns may establish a separate Ditch Company for the provision of water to the Association. Any Owner or holder of a security interest in any property in the Community shall be deemed to have consented to the formation of any such Ditch Company as deemed by Declarant to be in the best interests of the community and shall execute all documents necessary to give effect to the formation of any such Ditch Company. Provided further such Ditch Company shall have all rights afforded such districts under the laws of the State of Colorado and may contract with the Association, Declarant or any entity controlled by Declarant.

(h) Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration or by the Act.

**Section 9.3 Rights Transferrable/Rights Transferred.** Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the Archuleta County. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners or any holders of a security interest in a Lot. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the Archuleta County. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) with the consent of the appropriate Owner(s) or any holders of a security interests in the Lots.

**Section 9.4 No Further Authorizations Needed.** Except as set forth in this Declaration, the consent of Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Lots initially submitted.

**Section 9.5 Amendment of the Declaration or Plat and/or Map.** If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

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**Section 9.6 Interpretation.** Recording of amendments to the Declaration and the plat or plats pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically: (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Lot; and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all Amendments to the Declaration, and the Plat without specific reference thereto.

**Section 9.7 Termination of Reserved Rights.** The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (a) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (b) extended as allowed by law or, (c) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the Archuleta County, State of Colorado.

#### **ARTICLE 10. ALTERNATIVE DISPUTE RESOLUTION—UNITS AND THE COMMON ELEMENTS**

**Section 10.1 Purpose.** One of the purposes of the Declaration is to establish a harmonious Community. Because the prompt, efficient and fair resolution of any construction or design dispute is desirable, any construction or design controversy arising out of or relating to the Residences and other improvements on Lots and/or the Common Elements must be resolved as set forth in this Article.

**Section 10.2 Direct Communication.** The parties to the disagreement over an Excluded Claim must set forth their respective positions in the dispute in correspondence. Each party must respond within 14 days after receipt of a letter from the other until agreement is reached. If an agreement is not reached, the next section of this Declaration applies.

**Section 10.3 Mediation.** If an Excluded Claim cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly credentialed mediator. The parties must participate in the mediation in good faith until the dispute is resolved for a period not to exceed 60 days with the consent of all parties. The cost of the mediation must be divided equally among the parties. If a mediation does not resolve the Excluded Dispute, the next section of this Declaration applies.

#### **Section 10.4 Arbitration.**

(a) If the Excluded Claim cannot be resolved through mediation, such dispute must be decided by mandatory and binding arbitration in accordance with the rules of the American Arbitration Association (“RIVER ROCK ESTATES”) currently in effect. All Excluded Disputes must be decided by mandatory and binding arbitration in accordance with the rules of the RIVER ROCK ESTATES currently in effect.

(b) The following procedures apply to arbitration:

(i) Demand for arbitration must be filed in writing with the other party and with the RIVER ROCK ESTATES.

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(ii) A demand for arbitration must be made within thirty days after the dispute in question has arisen and failed to be resolved by mediation.

(iii) In no event may the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

(iv) No arbitration arising out of or relating to this Declaration may include, by consolidation, joinder or any other manner, an additional person or entity not subject to the Declaration, except that the Declarant, at its sole election and in its sole discretion, may by consolidation, joinder or any other manner, include contractors, subcontractors or other parties involved in the construction and/or planning of the Community.

(v) The arbitrator to hear the Excluded Claim may be jointly selected by the parties. If the parties cannot agree within 21 days, the parties shall select the arbitrator they desire. Then, those arbitrators shall, amongst them, select the arbitrator to hear the Excluded Claim.

(c) The provision of this Article to arbitrate, or the Declarant's election to arbitrate, or the Declarant's determination to include any additionally person or entity not subject to this Declaration in an arbitration are specifically enforceable in accordance with applicable law with any court having jurisdiction.

(d) The award rendered by the arbitrator or arbitrators is final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

(e) All filing fees and RIVER ROCK ESTATES costs associated with the arbitration itself must be paid for by the party who files the notice of arbitration.

#### **Section 10.5 Actions by the Association or any Owner.**

(a) The Association may not commence or maintain an arbitration on any Excluded Dispute unless the commencement and maintenance has first been recommended by the Board and, is also approved by Owners holding at least 67% of the votes in the Association.

(b) The Association must also comply with all requirements of state statutes on Excluded Claims and ordinance passed by local governmental jurisdiction, if any.

(c) The Association must also comply with all requirements of applicable state statutes.

(d) The Association or any Owner may proceed with communication, mediation, and arbitration, as allowed for under this Article, without a vote of Owners holding at least 67% of the votes as long as they are in compliance with the provisions of the Act.

(e) On an Excluded Dispute, the Association, if the Association complies with the terms of this Article, has the power to commence and maintain an arbitration as may be deemed appropriate by the Board and as may be permitted pursuant to the Act.

(f) In making its recommendation to the Owners to bring an arbitration on an Excluded Claim, the Board is to exercise its reasonable judgment. The Board must consider, without limitation, the likelihood of success, the impact such action may have upon the market values of Lots or other portions of the Community, the cost of pursuing the arbitration including attorneys' fees and expert fees, the resources of the Association and whether a

special Assessment or depletion of reserves is to be required in connection with pursuit of those claims or as a result after those claims have been pursued.

(g) The Board must prepare a written analysis of the risks and benefits to the Owners of commencing and maintaining an arbitration on an Excluded Dispute.

(h) The Board must deliver a copy of that written analysis to each of the Owners at least 7 days prior to the date scheduled for the meeting of Owners or vote at which the Owners must vote whether or not to proceed.

(i) The Association may not bring an arbitration on an Excluded Dispute, even with amendment of this Declaration, without compliance with the terms of this Article (un-amended) and without compliance with the terms of the Act.

(j) The Association may not bring a lawsuit on an Excluded Claim, as these claims are subject to the provisions of this Declaration.

(k) Owners may not bring a lawsuit on an Excluded Claim, as these claims are subject the arbitration agreement as initial Owners have entered into with the Declarant and are also subject to the provisions of this Declaration.

**Section 10.6 Sole Remedy-Waiver of Judicial Rights.** Subject to the Declarant's election rights set forth in this Declaration, and the remedies available for Excluded Disputes, the Declarant, the Association, and each Owner expressly consent to the substance and procedures established in this Article as their sole and exclusive remedy. Each of these parties also expressly waive any right they may have to seek resolution of any Excluded Dispute contemplated by this Article in any court, except as expressly allocated to the Association. Each of these parties also waive any right to trial by a jury. If a dispute involves the Declarant, an Owner or the Association, no person may file a memorandum of *lis pendens* or similar instrument that would encumber or create a lien upon the land owned by the Declarant, an Owner or the Association.

**Section 10.7 Binding Nature; Applicable Law.** The consideration of the parties to be bound by the provisions of this Article of this Declaration is not only the waiver of access to determination by a court (as applicable) and by a jury, but also the waiver of any rights to appeal the arbitration finding other than for the reasons available under Colorado law. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.

**Section 10.8 Location.** All alternative dispute resolution proceedings under this Article must be held in Southwest Colorado, unless otherwise mutually agreed by the parties.

**Section 10.9 Payment of Expenses under This Article.** Beyond filing fees and RIVER ROCK ESTATES costs associated with the arbitration (those costs being the obligation of the party who files the notice of arbitration), each party is responsible for their own costs, expenses, experts and attorney fees in the mediation and arbitration.

**Section 10.10 Amendment of this Article.** The Provisions of this Article may be amended with a majority vote of the Owners and with the consent of the Declarant.

## ARTICLE 11. AUTHORITY AND ENFORCEMENT

**Section 11.1 Compliance with and Enforcement of Governing Documents.**

(a) Compliance Required. Every Owner and Resident is to comply with the applicable provisions of the Governing Documents. Any aggrieved Owner has the right to take action to enforce the terms of the Governing Documents against another Owner or Resident.

(b) Association Remedies. The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for their violation. Sanctions may include, without limitation:

(i) imposing of reasonable monetary fines, after notice and opportunity for a hearing, which is to be a lien upon the violator's Lot in the event that any Resident, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine is to first be assessed against the violator. If the fine is not paid by the violator within the time period set by the Association, the Owner is to pay the fine upon notice from the Association;

(ii) suspending of voting rights;

(iii) suspending of the Owner's rights to use the recreational facilities (as well as the rights of the Owner's family, guests and Residents to use the recreational facilities);

(iv) suspending of any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any Assessment or other charge owed to the Association;

(v) exercising self-help or action to abate any violation of the Governing Documents in a non-emergency situation, subject to any requirements set forth in this Declaration, including those related to maintenance, repair or replacement;

(vi) requiring an Owner, at the Owner's expense, to cease any construction of any modification that has not been approved, or to remove any structure or improvement in the Lot or the Common Areas in violation of the Governing Documents and to restore the Lot or Common Areas to its previous condition and, upon the Owner's failure to do so, the Association has the right to enter the Lot or Common Areas, remove the violation and restore the Lot or Common Areas to substantially the same condition as previously existed and any action is not deemed a trespass;

(vii) recording in the real property records a notice of violation identifying any uncured violation of the Governing Documents; and

(viii) other remedies provided for in this Declaration or by applicable law.

(c) Emergencies and Legal Action. In addition, the Association may take the following enforcement procedures to seek compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, towing vehicles that are in violation of any parking Rules and Regulations); and/or

(ii) instituting any civil action to enjoin any violation or to recover monetary damages or both.

(d) Remedies Are Cumulative. All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity.

(e) Costs Incurred by Association. If the Association exercises any of its rights pursuant to this section, all costs is to be assessed against the violating Owner or Resident and is to be a lien against the Lot. Additionally, subject to the Act, the Association is to also be entitled to reasonable attorney fees actually incurred, which is to be collected as an Assessment.

**Section 11.2 Failure to Enforce.** The Association has the discretion to pursue enforcement action in any particular case, except that the Association may not be arbitrary and capricious. The Association's failure to enforce any provision of the Governing Documents is not deemed a waiver of its right to do so thereafter. No claim or right of action exists against the Association for failure of enforcement where: (a) the Association determines that its position is not strong enough to justify taking enforcement action; (b) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (c) the Owner or party requesting enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so.

## ARTICLE 12. AMENDMENTS OR TERMINATION

### Section 12.1 Amendment by Owners.

(a) This Declaration and/or the Plat and/or Map may be amended by the affirmative vote, written agreement, or any combination of affirmative vote and written agreement of the Owners holding at least 67% of the total Association vote.

(b) If a proposed amendment is to be considered at a Member meeting, notice of the meeting is to state the general subject matter of the proposed amendment. No amendment is to be effective until certified by the Association's president and secretary and recorded in the real property records.

(c) No amendment made by the Owners or by the Association is effective until certified by the President and secretary of the Association and recorded in the County of Archuleta, Colorado land records.

**Section 12.2 Amendments by Board of Directors.** The Board of Directors, without the necessity of a vote by the Owners, may amend this Declaration to correct any scrivener's errors, to comply with any applicable local, state, or federal law, and/or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") or any successor governmental agencies pursuant to federal law.

**Section 12.3 Amendment of Declaration or Plat and/or Map by Declarant.** If Declarant shall determine that any amendments to this Declaration or the Plat and/or Map shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Lot Owners or Mortgage Holders. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of 10 years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Lot Owner and Mortgage Holder. Each deed, security interest, other evidence of obligation or other instrument affecting a Lot and the acceptance is deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

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**Section 12.4 Required Consent of Declarant to Amendment.** Any proposed amendment or repeal of any provision of this Declaration reserving Development Rights, Special Declarant Rights or other development rights or for the benefit of Declarant or its assignees is not effective unless Declarant or its assignees, if any, have given written consent to such amendment or repeal. That consent may be evidenced by the execution by Declarant or its assignees of a certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal terminates 30 years after the recording of this Declaration.

**Section 12.5 Validity.** Any action to challenge an amendment's validity must be brought within one year of the effective date of the amendment.

**Section 12.6 Termination.** This Declaration and the Community may be terminated in the manner as provided for and allowed for in CCIOA.

### ARTICLE 13. GENERAL PROVISIONS

**Section 13.1 Security.** The Association may, but is not required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community. However, each Owner, for himself and his Residents, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association does not have a duty to provide security in the Community. Furthermore, the Association does not guarantee that non-Owners and non-Residents is to not gain access to the Community and commit criminal acts in the Community nor does the Association guarantee that criminal acts in the Community is to not be committed by other Owners or Residents. Each Owner is responsible to protect his person and property and all responsibility to provide security lies solely with each Owner. The Association is not liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

**Section 13.2 Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any of its rights or privileges.

**Section 13.3 Interpretation.** The provisions of this Declaration is to be liberally construed to effectuate their purposes of providing a uniform plan for the Community and of promoting and effectuating the fundamental concepts set forth in the recitals of this Declaration. This Declaration is to be construed and governed under the laws of the State of Colorado.

**Section 13.4 Electronic Records, Notices and Signatures.** Notwithstanding any other portion of this Declaration, records, signatures and notices is to not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws is to govern the giving of all notices required by this Declaration.

**Section 13.5 Duration.** The covenants and restrictions of this Declaration run with and bind the Community perpetually unless otherwise terminated as provided in C.R.S. § 38-33.3-218.

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**EXHIBIT A – Legal Description of the Real Estate**

All of FAIRWAY LAND TRUST EXEMPTION, according to the plat thereof filed for record October 6, 2017 as Reception No. 21706132.

**END EXHIBIT A**

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Archuleta County

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Kristy Archuleta  
Archuleta County

**EXHIBIT B – Initial Lots**

- Lot 1
- Lot 2
- Lot 3
- Lot 4
- Lot 5
- Lot 6
- Lot 7
- Lot 8
- Lot 9
- Lot 10

**END EXHIBIT B**



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**EXHIBIT C – Allocated Interests**

Intentionally left blank as reference in CC&R's were deleted

**END EXHIBIT C**

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**EXHIBIT D – Common Elements**

Intentionally Omitted from CC&R's and identified on Plat.

END EXHIBIT D

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**EXHIBIT E – Real property that may become Common Elements of the Association**

None.

END EXHIBIT E

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**EXHIBIT F – Limited Common Elements**

None.

END EXHIBIT F

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Archuleta County

**EXHIBIT G – Real Property that May be Annexed**

Lot 1B, REPLAT OF Lot 1, Block 67, Townsite of Pagosa Springs, according to the plat thereof filed for record November 16, 2001 as Reception No. 20110323.

And,

Property adjacent to the Real Estate or located across a public street or private access easement, within the County of Archuleta, State of Colorado, provided the owner of that property consents.


END EXHIBIT G



**Lender Consent and Subordination**

This Lender Consent and Subordination is by River Rock Estates, LLC, a Colorado Limited Liability Company as a "Lender" with a loan secured by a deed of trust on the Real Estate described in the above Declaration. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Lender consents to the Declaration and agrees that its deed of trust and all of Lender's rights are and is subject and subordinate to the Declaration.

River Rock Estates, LLC, a Colorado Limited Liability Company

By:   
Name: Jack Searle  
Title: Manager

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF ARCHULETA    )

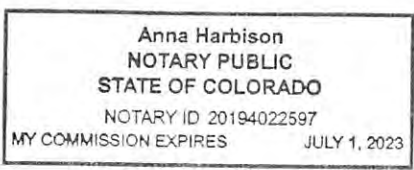
The foregoing instrument was acknowledged before me on the 10<sup>th</sup> day of June, 2020, by Jack Searle, as Manager of River Rock Estates, LLC, a Colorado Limited Liability Company

  
Notary Public in and for the State of Colorado.

Notary Name Printed: \_\_\_\_\_ SEAL



My Commission Expires: 7.1.2023



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Kristy Archuleta  
Archuleta County

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**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER ROCK ESTATES**

THIS FIRST AMENDMENT is made this 5<sup>th</sup> day of October, 2021, by RRE SALES LLC, a Colorado limited liability company (hereinafter "Declarant"), and amends the Declaration of Covenants, Conditions and Restrictions for River Rock Estates recorded on June 11, 2021, at Reception No. 22104388, records of Archuleta County, Colorado (the "Declaration").

**Background and Purpose**

A. Pursuant to Section 9.1, Development Rights of Declarant, Declarant has the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions.

B. Pursuant to Section 12.1 of the Declaration, Declarant and at least 67% of all Members may approve an amendment to the Declaration. Declarant is the "Declarant" under the Declaration and also the Owner of 100% of the land within the Community subject to the Declaration and desires to amend the Declaration as set forth in this First Amendment.

C. The purpose of this First Amendment is to i) amend Section 2.13 to require permission from an owner to access property under the Utility Reservation Easement; and ii) amend Section 7.12 (a) of the Declaration changing the number of generally recognized pets allowed from two (2) to three (3).

D. The Association created in the Declarations herein joins in the execution of this First Amendment to confirm the Board of Directors' approval of the amendments to the Declaration contained in this First Amendment.

Accordingly, Declarant amends the Declaration as follows:

**Amendment**

1. Section 2.13 Utility Reservations is amended by deleting the stricken text and by addition of the capitalized/underlined text as follows:

**Section 2.13 Utility Reservations.** Declarant creates and reserves to itself, until Declarant has sold the last Lot that may be created to an Owner other than Declarant, and, thereafter, to the Association, an ~~blanket~~ blanket easement upon, across, over and under the Real Estate, the Community and the Lots for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment and effluent irrigation systems, gas, telephone and other telecommunications systems, electricity, heat and cooling systems, and master television and satellite antenna or cable systems, and any other utility systems as may be desired or provided (collectively, "Utility Systems"). THE DECLARANT, AND, THEREAFTER, THE ASSOCIATION, MUST FIRST NOTIFY AND RECEIVE PERMISSION FROM THE OWNER BEFORE ACCESSING PRIVATE PROPERTY OF SUCH OWNER, HOWEVER, SUCH PROPERTY OWNER MAY NOT WITHHOLD PERMISSION TO ACCESS THE PROPERTY FOR THOSE DEMONSTRABLE REASONS STATED IN THIS SECTION 2.13. By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Real Estate and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, heat and cooling facilities, telephone and other telecommunications

RET: 1040 E. McCabe, Pagosa Springs, CO 81147



facilities, telephone and television wires, circuits, conduits and meters, and any other improvements or facilities appurtenant or relating to the Utility Systems. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Declaration requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Real Estate is reserved, provided the easement granted does not conflict with the terms of this Declaration. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Real Estate. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section is to be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

2. Section 7.12 Pets, paragraph (a) is amended by deleting the stricken text and by addition of the capitalized/underlined text as follows:

(a) An Owner or Resident may keep ~~two (2)~~ THREE (3) generally recognized household pets in the Residence or on a Lot.

3. Capitalized Terms. Any capitalized term used in this First Amendment shall have the same meaning ascribed to it in the Declaration.

4. Conflicting Provisions. If the provisions of this First Amendment conflict with any of the provisions set forth in the Declaration, the provisions of this First Amendment shall control.

This First Amendment is approved by RRE Sales LLC, as Declarant and Owner of all of the land in the Community, and by the Board of Directors of River Rock Estates Homeowners Association, effective as of the date set forth above.

**DECLARANT:**

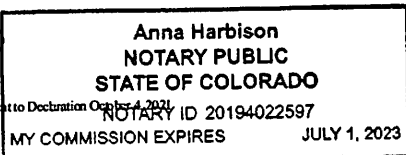
**RRE SALES LLC**  
a Colorado limited liability company

By:   
Rory Burnett, Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARCHULETA )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of October, 2021, by Rory Burnett, Manager of RRE Sales LLC, a Colorado limited liability company. Witness my hand and official seal.

My commission expires 7.1.2023

(SEAL)   
Anna Harbison  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20194022597  
MY COMMISSION EXPIRES JULY 1, 2023

  
Notary Public

