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SANDRA J JACKSON, RECORDER, RIO GRANDE CTY, CO

**SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VILLAGE AT ALDER CREEK**

August 2, 2004

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ARTICLE II
DEFINITIONS

The following terms shall have the meanings set forth below when used herein.

2.1 Act. The Colorado Common Interest Ownership Act, codified at C.R.S. § 38-33.3-101 et seq., as the same has been and may hereafter be amended from time to time, and any statute which from time to time may replace the same.

2.2 Architectural Review Committee. The committee formed pursuant to Section 13.3, which committee shall have exclusive jurisdiction over all construction, alteration and removal of Improvements submitted by any Owner on any portion of the Property subject to any requirements of the Design Review Committee.

2.3 Articles of Incorporation or Articles. The Articles of Incorporation of the Association which have been or will be filed with the Secretary of State of the State of Colorado, as amended from time to time.

2.4 Assessment. An assessment, which may be a Common Assessment, a Limited Assessment, a Special Assessment or a Specific Assessment, that is levied by the Association on one or more Units pursuant to the terms of this Declaration.

2.5 Association. The Village at Alder Creek Homeowners Association, a Colorado nonprofit corporation, and its successors.

2.6 Betterments. Any "improvements" or "betterments," as those terms are commonly used in the insurance industry, to a Residence relating to upgraded or improved elements, fixtures or finishes of the Residences beyond those initially installed by the builder of the Residence, or reasonably comparable substitutes or replacements.

2.7 Board of Directors or Board. The Board of Directors of the Association.

2.8 Bylaws. The Bylaws of the Association, as amended from time to time.

2.9 Common Allocation. The Common Allocation for each Unit is determined by dividing 1.00 by the total number of Units included in the Community. In the event that any Unit is subdivided into two or more Units, or two or more Units are combined into fewer Units, pursuant to the provisions of Sections 5.1(c) and 5.2 of this Declaration, the Voting Units of such Units shall be reallocated among the resulting Units, with such resulting change in the Common Allocation for such Units being deemed to occur automatically without any further action by the Association or Declarant; provided, however, that the Association and, during the Development Period, Declarant shall have the right to Record a Supplemental Declaration that that sets forth the actual Common Allocation for each Unit then applicable.

2.10 Common Assessment. An Assessment levied on all Units subject to assessment under Article XI to fund the Common Expenses as more particularly described in Section 11.3.

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2.11 Common Elements. All real property, easements, possessory interests in property and Improvements within the Community owned or to be owned and maintained by the Association pursuant to this Declaration for the benefit, use or enjoyment of the Owners, which shall be designated either General Common Elements or Limited Common Elements, as appropriate. Subject to Sections 5.1(b) and 5.2, the Common Elements are described on **Exhibit C**. Common Elements described on **Exhibit C** as Improvements located or to be located on or within public rights-of-way shall, for the purposes of this Declaration, be deemed to be owned by the Association, even if such Improvements are, by operation or requirement of law, actually owned by the County or another public entity.

2.12 Common Expenses. Except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws, including, without limitation: all costs of operating, managing, maintaining, replacing or restoring the General Common Elements and the Association's personal property; taxes on the General Common Elements to the extent payable by the Association; and general administrative costs incurred by the Association. Common Expenses shall not include Limited Common Elements Expenses or costs or expenses to be funded by or payable through the levying of Specific Assessments.

2.13 Community. The "planned community" created by this Declaration pursuant to the Act, the name of which planned community shall be "The Village at Alder Creek."

2.14 County. The County of Rio Grande, State of Colorado.

2.15 Declarant. Wildflower Ridge, L.L.C., a Colorado limited liability company or any successor in interest or assignee who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a Recorded instrument executed by the immediately preceding Declarant.

2.16 Declarant Control Period. The period beginning on the date the Association is formed and ending on the first to occur of (i) sixty (60) days after 75% of the maximum number of Units that may be created pursuant to Section 3.3 have been conveyed to Owners other than Declarant; (ii) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; (iii) two (2) years after any right to add new Units is last exercised by Declarant; or (iv) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a Recorded statement of termination; provided, however, that in this last event, Declarant may require that, for the balance of what would have been the Declarant Control Period had Declarant not terminated the same, certain actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. During the Declarant Control Period, Declarant shall have the right to appoint and remove the Directors and the officers of the Association to the extent permitted by the Act.

2.17 Declaration. This Supplemental Declaration of Covenants, Conditions and Restrictions for The Village at Alder Creek, including the Plat, as either or both of them is amended or supplemented from time to time by a Supplemental Declaration or otherwise.

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**SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VILLAGE AT ALDER CREEK**

THIS SUBSIDIARY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGE AT ALDER CREEK is made as of August 2, 2004, by WILDFLOWER RIDGE, L.L.C., a Colorado limited liability company ("Declarant").

**ARTICLE I
GENERAL**

1.1 Purposes. This "Declaration" (as defined below) is executed in order to impose upon certain real property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of such property, and to establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of such property. In furtherance thereof, this Declaration provides for the creation of The Village at Alder Creek Homeowners Association to own, operate and maintain the Common Elements (as defined below), and to administer and enforce the provisions of this Declaration, the Bylaws and the Rules (as such terms are defined below).

1.2 Declaration. Declarant, for itself and its successors and assigns, hereby declares that all of the Property (as defined below) shall, from and after the date hereof, constitute a planned community and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the covenants, conditions, restrictions, reservations, easements, equitable servitudes and other provisions set forth in this Declaration in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property and to enhance the value, desirability and attractiveness of the Property. This Declaration shall: (i) run with the Property at law and as an equitable servitude; (ii) bind any Person (as defined below) having or acquiring any right, title or interest in any portion of the Property; (iii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon and be enforceable by Declarant and its successors in interest and assigns, each Owner (as defined below) and its heirs, successors in interest and assigns, and the Association (as defined below) and its successors in interest.

1.3 Exhibits. The following exhibits are attached to and, by this reference, incorporated as part of this Declaration:

- | | |
|-----------|--------------------------------------|
| Exhibit A | Legal Description of the Property |
| Exhibit B | Title Matters Affecting the Property |
| Exhibit C | Common Elements |

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2.18 Design Guidelines. The Rules, if any, promulgated by the Architectural Review Committee pursuant to Section 13.4 governing the construction, installation, modification or renovation of Improvements on any Unit.

2.19 Design Review Committee. The Committee formed pursuant to Article VIII of the Master Declaration. The Design Review Committee has exclusive jurisdiction over the review and approval of design and construction of the Initial Improvements in accordance with the Section 8.1 of the Master Declaration.

2.20 Developer. Any Owner who purchases one or more Units for the purpose of constructing Improvements for later sale to residential consumers, for further subdivision pursuant to Sections 5.1(f) and 5.2 of this Declaration into two or more Units, and/or development, leasing or resale in the ordinary course of such Owner's business.

2.21 Development Period. The period of time during which Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Development Period shall commence upon the Recording of this Declaration and shall terminate 30 years later unless reinstated or extended by agreement between Declarant and the Association; provided, however, that the exercise of any Special Declarant Rights pursuant to such agreement shall be subject to such terms as the Board may impose in such agreement.

2.22 Development Rights. The rights reserved by Declarant pursuant to Section 5.1.

2.23 Director. A member of the Board of Directors.

2.24 Eligible Holder. A Mortgagee who provides a written request for notices to the Association, stating the name and address of such Mortgagee and the street address, or, if not available, other sufficient identification, of the Unit to which its Mortgage relates. The Fair Housing Administration and the Department of Veterans Affairs shall be considered Eligible Holders regarding any Units for which they are insuring or guarantying Mortgages if they satisfy the written request requirements described above in this Section.

2.25 First Mortgage. A Mortgage that is Recorded and has priority of record over all other Recorded liens except those liens made superior by statute (c.g., general ad valorem tax liens and special assessments, mechanics' liens and, to the extent set forth in the Act, the Association's liens for Assessments).

2.26 First Mortgagee. A beneficiary or holder of a First Mortgage.

2.27 General Common Elements. Common Elements that are for the benefit, use or enjoyment of all of the Owners, subject to the terms and conditions of this Declaration. Subject to Sections 5.1(b) and 5.2, the General Common Elements are described on **Exhibit C**. Additional General Common Elements may be created by Declarant pursuant to Article V.

2.28 Improvements. All structures, improvements and appurtenances on or to real property of every type and kind including, without limitation, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials,

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antennas, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, dog runs, hot tubs, landscaping, grading, drainage facilities, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone or other utilities, as well as those construction activities necessary to build such items.

2.29 Initial Improvements. Except for the Improvements defined in Section 2.28 above, any improvements of any nature whatsoever constructed on any part of the Property, including but not limited to: (a) the construction, installation, erection or expansion of any building, structure or other improvements, including utility facilities and "Water System," as defined in the Master Declaration; and (b) the grading, excavation, filling or similar disturbance to the surface of the Property, including without limitation, change of grade, ground level and drainage pattern.

2.30 Insured Permittee. Any Permittee who is required to maintain, who in fact does maintain, or who is listed as an additional insured under, a policy of property insurance covering a Unit, any portion thereof or any personal property located therein.

2.31 Limited Assessment. An Assessment levied in accordance with Section 11.4 to fund the Limited Common Elements Expenses.

2.32 Limited Common Elements. Common Elements that are for the benefit, use or enjoyment of less than all of the Owners, subject to the terms and conditions of this Declaration. Subject to Sections 5.1(b), 5.1(f) and 5.2, Limited Common Elements may be established pursuant to a Supplemental Declaration. The allocation of any Limited Common Elements among particular Units may be altered or reallocated pursuant to Section 208 of the Act, provided such reallocation receives the prior written approval of the Board and, during the Development Period, Declarant. Additional Limited Common Elements may be created by Declarant pursuant to Article V.

2.33 Limited Common Elements Expenses. All costs, expenses and financial liabilities incurred by the Association in operating, maintaining, managing, repairing, restoring, replacing, and, to the extent payable by the Association, paying taxes on, the Limited Common Elements.

2.34 Master Association. South Fork Ranches Master Homeowners Association, Inc., a Colorado nonprofit corporation, or any successor thereto, that oversees the management and operation of all of the property subject to the Master Declaration.

2.35 Master Declaration. The Master Declaration of Covenants, Conditions and Restrictions for South Fork Ranches, Recorded on November 28, 2000, under Reception No. 366491, together with all maps and plats filed in conjunction therewith, and any supplements or amendments thereto.

2.36 Member. A Person who is a member of the Association pursuant to Section 10.1.

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2.37 Mortgage. An unpaid or outstanding mortgage, deed of trust, deed to secure debt or any other form of security instrument encumbering the Property or a portion thereof.

2.38 Mortgagee. A beneficiary or holder of a Mortgage.

2.39 Owner. A Person or Persons, including Declarant or a Developer, owning fee simple title of record to any Unit from time to time. The term "Owner" shall include a seller under an executory contract for sale and exclude a buyer thereunder and shall include a landlord under a lease affecting a Unit and exclude a tenant thereunder.

2.40 Party Wall. The common wall, together with the underlying footings, foundation and the overlying portion of the roof, which connects or is shared by two adjacent Residences and which has been or is constructed substantially along and over a portion of the boundary separating certain Units on which the Residences are situated. The Party Wall shall not include sheet rock, interior paint, wall paper, molding, woodwork and other trim and finishes, or other non-structural, interior elements attached to, or incorporated in, the party wall.

2.41 Party Wall Residence. A Residence that shares a Party Wall with one or more Residences.

2.42 Permittee. A Person, other than an Owner, who is a tenant or occupant of a Unit or a Person who is an agent, employee, customer, contractor, licensee, guest or invitee of an Owner or the Association, or of such tenant or occupant.

2.43 Person. A natural person, corporation, partnership, limited liability company, trustee or other legal entity.

2.44 Plat. The Final Plat of the Village at Alder Creek, as such plat is amended or supplemented from time to time pursuant to this Declaration and/or the Act. Without limiting any other provision of this Declaration, the Plat may be supplemented or amended by a subdivision or resubdivision plat that is filed pursuant to the County's subdivision regulations, references the Plat as originally recorded and otherwise satisfies the requirements of the Act.

2.45 Property. All of the real property described on **Exhibit A**, the appurtenances thereto, and all Initial Improvements and Improvements now in place or hereafter constructed thereon.

2.46 Quorum. With respect to a meeting of the Members or the Board of Directors, that percentage or number of the Members or Directors that constitutes a quorum pursuant to the applicable provisions of the Bylaws.

2.47 Records. The official real property records of the County; the phrases "to Record" and "Recording" mean, respectively, to file or filing for recording in the Records, and the phrases "of Record" and "Recorded" mean having been recorded in the Records.

2.48 Residence. The primary residential structure, and any fixtures attached and Improvements appurtenant thereto, located on each Unit, comprised of one or more

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connected rooms constituting a separate, independent housekeeping unit for permanent residential occupancy by a familial group and containing at least one kitchen facility. For the Purposes of Article XIV hereof, a Residence shall include, without limitation, structural and non-structural components, exterior and interior walls, floors, ceilings, roofs, carpet, tile, vinyl, wood and other floor coverings, paint, tile, brick, wallpaper and other wall coverings, light fixtures, built-in dishwashers, trash compactors, ovens, ranges, hoods and other appliances, bathroom and kitchen sinks, toilets, bathtubs, shower enclosures and doors, electrical, plumbing, heating, ventilation, air-conditioning and mechanical systems, fixtures and equipment, base and case moldings, fireplaces, windows, doors, mirrors, but shall exclude security, intercom and sound systems.

2.49 Rules. The rules and regulations governing the use of the Property which are adopted from time to time by the Association, the Board or the Architectural Review Committee, including, without limitation, the Design Guidelines. The Rules shall be binding upon all Owners and their Permittees.

2.50 Single Residence Damage. Casualty or other internal damage to a single Party Wall Residence which does not affect an adjacent Party Wall Residence, does not affect the structure or exterior of either Party Wall Residence, does not render either Party Wall Residence uninhabitable, and the repair or restoration costs are not reasonably expected to exceed \$20,000, or such other reasonable threshold amount as maybe established from time to time by the Board.

2.51 Special Assessment. An Assessment levied in accordance with Section 11.5.

2.52 Special Declarant Rights. The rights of Declarant set forth in Article VIII.

2.53 Specific Assessment. An Assessment levied in accordance with Section 11.6.

2.54 Subsidiary Association. A "unit owners' association" as defined in the Act created pursuant to a Supplemental Declaration.

2.55 Subsidiary Declaration. A Recorded declaration of covenants, conditions and restrictions which provides a general scheme for the development of a specific portion of the Property and is a "declaration" pursuant to the Act.

2.56 Supplemental Declaration. An amendment to this Declaration filed in the Records pursuant to this Declaration.

2.57 Taking. A taking by eminent domain or conveyance in lieu thereof.

2.58 Total Voting Units. Subject to Section Error! Reference source not found., the sum of all the Voting Units attributed to all of the Units.

2.59 Unit. A physical portion of the Property, whether improved or unimproved, that is designated for separate ownership pursuant to this Declaration and on which

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at least one Residence may be constructed pursuant to this Declaration and or other applicable zoning document. Subject to Sections 5.1(b) and 5.2, the Units are legally described and identified on the Plat. Any Unit may be subdivided into two or more Units in accordance with and subject to the limitations and requirements of Sections 5.1(c) and 5.2 of this Declaration. The boundaries between adjoining Units may be relocated in accordance with and subject to the limitations and requirements of Sections 5.1(c) and 5.2 or Section 7.1 of this Declaration. The term Unit shall not include any Common Elements owned in fee simple by the Association or any property dedicated to any governmental or quasi-governmental entity for a public purpose. The term Unit, as used in this Declaration, is intended to be coextensive with the term "unit" as used in the Act, and, without limiting the foregoing, any unit within a legally established "condominium" (as defined in the Act) shall constitute a separate Unit under this Declaration.

2.60 Voting Units. Each Unit's Voting Unit is equal to the Unit's Common Allocation.

ARTICLE III CREATION OF THE COMMUNITY

3.1 Creation. Upon the Recording of this Declaration and the Plat, the Property shall be a "planned community" pursuant to the Act, and the name of the planned community shall be "The Village at Alder Creek."

3.2 Division of Property. Pursuant to the Act and subject to Sections 5.1(b), 5.1(c) and 5.2, the Property is divided into the Units identified and legally described on the Plat. The Units are designated for separate ownership.

3.3 Number of Units. The maximum number of Units that may be created in the Community is 225.

3.4 Allocations.

(a) Allocation of Votes. In all matters submitted to a vote of the Members of the Association, each Unit is allocated a number of votes equal to the Voting Units for such Unit; provided, however, that no vote shall be exercised for any Unit owned by the Association and no vote shall be exercised for any property which is exempt from assessment under Section 11.12.

(b) Allocation of Common Expenses. Subject to Section **Error! Reference source not found.**, each Unit is allocated, and the Owner of the Unit is liable for, a percentage of the Common Expenses equal to such Unit's Common Allocation. All other costs and expenses of the Association are allocated among the Units as otherwise provided in this Declaration.

3.5 Master Declaration. The Property is located within the planned community known as "South Fork Ranches," as created by the Master Declaration.

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ARTICLE IV
USE RESTRICTIONS

4.1 Residential and Business Uses.

(a) Residential Use. Except as set forth in this Section 4.1, the Property shall be used only for residential, recreational and related purposes consistent with this Declaration.

(b) Conduct of Business Activities. No business or trade, may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activities is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all applicable zoning and other legal requirements; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

(c) Business or Trade. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the 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: (a) such activity is engaged in full- or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

(d) Exceptions. Notwithstanding the above, the leasing of a Unit and the management of such Unit as rental property shall not be considered a business or trade within the meaning of this Section 4.1. This Section 4.1 shall not apply to any activity conducted by Declarant or a Developer with respect to the development or sale of the Property, or to any activity conducted by Declarant, a Developer or the Association that relates to the performance of their respective rights or obligations under this Declaration or otherwise benefits the Owners.

4.2 Leasing of Units. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner, for which the Owner receives any consideration or benefit including, without limitation, a rent, fee, service, gratuity or emolument. Any lease must be in writing. The Owner must make available to the lessee copies of this Declaration, the Bylaws and the Rules. Any leasing of a Unit must comply with the requirements of the Master Association.

4.3 Subdivision of Unit: Time-Sharing. No Unit shall be subdivided or its boundary lines changed except pursuant to the terms and limitations of Article IX or the exercise of Development Rights by Declarant or Developer authorized by Declarant. No Unit shall be made subject to any type of time-sharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

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4.4 Water and Mineral Operations. No oil or water drilling, oil or water development operations, oil refining, quarrying or mining operations of any kind shall be permitted.

4.5 Unightly or Unkempt Conditions. All portions of a Unit outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Unit which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. Any structures, equipment or other items which may be permitted to be erected or placed on the exterior portions of Units shall be kept in a neat, clean and attractive condition and shall promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty or dilapidated or have otherwise fallen into disrepair. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions is prohibited, unless either conducted entirely within an enclosed garage or, if conducted outside, begun and completed within 12 hours, and not done on a regular or frequent basis. No Owner or Permittee shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake or elsewhere on the Property, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff and such application complies with applicable law.

4.6 Quiet Enjoyment. Nothing shall be done or maintained on any part of a Unit that emits foul or noxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace, quiet, safety, comfort or serenity of the occupants and invitees of other Units. Illegal activities, and any activities which, in the reasonable determination of the Board, tend to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Elements or to the occupants and Permittees of other Units, shall be prohibited on the Property.

4.7 Prohibited Conditions. The following conditions, structures and activities are prohibited on the Property unless prior approval in writing is obtained from the Architectural Review Committee:

(a) Exterior Appearance. No Owner may make any alteration to the exterior of the Improvements to such Owner's Unit that would change the exterior appearance thereof, including, without limitation, any full or partial enclosure or covering of any patio area or the construction of any structure on the Unit.

(b) Window Coverings. The portions of any window blinds, shades, draperies or other coverings viewable from the exterior of any Residence shall be white, off-white, beige or natural wood finish.

(c) Landscaping. No Owner shall plant, remove or alter any landscaping, except that Owners may plant flowers in areas within the landscaping scheme on their Unit designed to serve as flowerbeds.

(d) Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes, shall be permitted except with the approval of the Association, which

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approval may be granted in blanket form by the Rules with respect to particular types of antennas or satellite dishes;

(e) Tree Removal. No trees or shrubs shall be removed except in compliance with Article XIII;

(f) Air-Conditioning Units. No window air-conditioning units or evaporative coolers shall be installed;

(g) Lighting. Exterior lighting visible from the street shall not be permitted except for: (i) lighting approved for installation on a Unit pursuant to Article XIII; (ii) street lights in conformity with an established street lighting program approved by the County; and (iii) reasonable seasonal decorative lights during the holiday season;

(h) Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation or similar items shall be permitted outside of any structure on a Unit, including, without limitation, fountains or clotheslines;

(i) Energy Conservation Equipment. Subject to the provisions of C.R.S. § 38-30-168, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure and approved by the Architectural Review Committee;

(j) Signs. No sign of any kind, including, without limitation, banners or similar items advertising or providing directional information, shall be erected on the Property without the written consent of the Board, except entry and directional signs installed by Declarant or a Developer authorized by Declarant and signs erected pursuant to Section 8.3 and except for one (1) sign, not to exceed two (2) feet by three (3) feet in dimensions, which may be used in connection with the sale of the Unit; provided, however, that if permission is granted to any Person to erect a sign on the Property, the Board reserves the right to restrict the size, color, lettering and placement of such sign;

(k) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted, except for temporary lines as required during construction and lines installed by or at the request of Declarant or a Developer;

(l) Doors and Windows. No "burglar bars," steel or wrought iron bars or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any building.

4.8 Animals and Pets. No animals, livestock, bees or poultry of any kind shall be raised, bred, boarded or kept on any portion of the Property, except that a reasonable number of dogs, cats or other usual and common household pets, which are bona fide household pets, or any combination of the foregoing not exceeding a reasonable aggregate number, may be kept on a Unit, subject to the following provisions and in accordance with applicable law. Any pet which is permitted to roam free, or which, in the sole discretion of the Association, makes objectionable noise or endangers the health of or constitutes a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Property, shall be removed upon

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request of the Board. If the Owner responsible for such pet fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. All pets shall be kept under the control of their Owner at all times, whether on or off such Owner's Unit. Dogs shall be permitted off-leash only within portions of the Unit which are enclosed by traditional or buried electric pet control fences. Any dog that is outside the Unit on which it resides or is in a portion of such Unit which is not enclosed by a traditional or buried electric pet control fence shall be confined on a leash held by a responsible person. Any Owner or Permittee who walks his or her dog on portions of the Property other than the Unit occupied by such Person shall immediately remove any excrement deposited by the dog on such other portions of the Property. The Board shall have the authority to restrict or prohibit the keeping of breeds of dogs with a known history of dangerous or vicious behavior. All such animals shall be licensed according to County Ordinance requirements and shall be registered with the Association. Failure to register any such animal shall automatically subject the Owner to a monetary fine in an amount to be determined by the Board.

4.9 Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages, in the driveways or portions thereof, if any, exclusively serving a single Unit, or in other appropriate spaces or areas, if any, designated by the Board. Vehicles shall be subject to such reasonable rules and regulations as the Board may adopt. Declarant and/or the Association may designate certain parking spaces within the General Common Elements for visitors or guests and may adopt reasonable rules governing the use of such parking spaces.

(b) Prohibited Vehicles. Except as otherwise set forth in the Rules, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or specific areas, if any, designated by the Board. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted on the Property except within enclosed garages. For purposes of this Section 4.9, a vehicle shall be considered "stored" if it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seven consecutive days without the prior approval of the Board. Service, construction and delivery vehicles may be parked on the Property for such periods of time as are reasonably necessary to provide services or to make deliveries to the Property. Any vehicle parked in violation of this Section 4.9 or parking rules promulgated by the Board may be towed at the direction of the Association and at the expense of the Owner of the affected Unit or the owner of the vehicle.

4.10 Fencing. Declarant and any Developer may construct entryways, fences, fence pillars or walls on the Common Elements or those portions the Property owned by Declarant or the Developer, respectively. No other Owners shall construct, modify, replace, paint or obstruct any fence, fence pillars or walls except in accordance with Article XIII. For purposes of this section, hedges shall be considered to be the same as fences and subject to the same restrictions. (The term "wall" as used in this section shall mean walls which are free-standing and intended to enclose the areas outside a structure.) Material for containment of any pets permitted by this Declaration may be added to perimeter fencing in accordance with Article XIII.

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4.11 Bodies of Water. All wetlands, lakes, ponds and streams on the Property, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of any lakes, ponds or streams on the Property.

4.12 Landscaping. All landscaping shall be maintained in good condition.

4.13 Irrigation. Except as approved and provided by the Association, no sprinkler or irrigation system of any type which draws upon water from creeks, streams, rivers, ponds, wetlands, canals, ditches or other ground or surface waters on the Property shall be installed, constructed or operated on the Property. However, Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Common Elements and other purposes consistent with their respective rights and obligations under this Declaration. Except as approved and provided by the Association, all sprinkler and irrigation systems serving the Units shall draw upon public water supplies only and shall be subject to approval in accordance with Article XIII of this Declaration. Private irrigation wells are prohibited on the Units. All landscape irrigation by an Owner shall be limited in amount and frequency to that which is reasonably necessary and appropriate, and shall not be allowed to result in flooding, saturation or other adverse effects of, on or to other property.

4.14 Grading, Drainage and Septic Systems. No Person shall alter the grading of any Unit without prior approval pursuant to Article XIII of this Declaration. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant or Developer authorized by Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains, or materially alter the rate, volume or location of runoff from a Unit onto adjacent property. Septic tanks and drain fields, other than those installed by or with the consent of Declarant, are prohibited on the Property.

4.15 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

4.16 Tents, Mobile Homes and Temporary Structures. Except as provided below, no tent, shack, mobile home or other structure of a temporary nature shall be placed upon a Unit or any part of the Property. This prohibition shall not apply to restrict the construction or installation of temporary construction sales trailers or similar temporary structures used in connection with development and sale of the Property.

4.17 Firearms. The discharge of firearms on the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

4.18 Roads. No motor vehicles may be driven or operated upon any portion of the Property except for public or private roads which have been platted on a subdivision plan or

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plat which is of Record, in garages or on driveways approved by the Architectural Review Committee; provided that Declarant, the Association and any Developer shall be permitted to operate motor vehicles on the Property in connection with their respective activities under this Declaration.

4.19 Laws and Ordinances. Every Owner and Permittee shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

4.20 Occupants Bound. All provisions of this Declaration, the Bylaws and the Rules shall also apply to all occupants of any Unit and to Permittees of any Owner or occupant. Every Owner shall cause all occupants of its Unit and its Permittees to comply with this Declaration, the Bylaws and the Rules.

ARTICLE V **DEVELOPMENT OF THE PROPERTY**

5.1 Development Rights. Declarant hereby reserves the following Development Rights for the duration of the Development Period:

(a) Designation for Public Purposes. Declarant reserves the right to designate or dedicate sites within the Property for public or quasi-public facilities as provided in Section 5.3.

(b) Creation and Conversion of Common Elements. Declarant reserves the right to establish, create and convert General Common Elements and Limited Common Elements as provided in Section 5.4.

(c) Subdivision and Replatting. Declarant reserves the unilateral right to subdivide into additional Units, change the boundary line of or replat any Units or other portions of the Property owned by Declarant; provided however, any such modification must be approved by the Design Review Committee in accordance with the Master Declaration.

5.2 Exercise of Development Rights. Declarant shall exercise any Development Right by preparing, executing and Recording a Supplemental Declaration amending the Declaration as necessary to effectuate the exercise of such Development Right, which Supplemental Declaration shall be accompanied by any amendment or supplement to the Plat required by the Act. If Declarant, by exercising any Development Right, creates any new Common Elements, then the Supplemental Declaration shall describe such newly created Common Elements and, in the case of newly created Limited Common Elements, designate the Unit or Units to which such Limited Common Elements are allocated. Except as expressly provided to the contrary in this Declaration, Declarant's exercise of any Development Right shall not require the consent of any other Owner.

5.3 Governmental Interests. For so long as Declarant owns any of the Property, Declarant may designate and dedicate sites within the Property for fire, police and utility facilities, public schools and parks, and other public or quasi-public facilities. Such a site may

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include Common Elements, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance or dedication of the site (subject to Section 16.3), if so directed by Declarant. Such a site may also include other property not owned by Declarant provided the owner of such property consents. Subject to Declarant's consent during the Development Period, but otherwise within the discretion of the Board, the Association may dedicate portions of the Common Elements to the County or to any other local, state or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 16.3.

5.4 Common Elements; Mechanics' Liens.

(a) Generally. The initial General Common Elements are described on **Exhibit C.** Declarant shall be responsible for completing the construction of any Improvements that Declarant determines will be located on or that will constitute such Common Elements, including, without limitation, landscaping, monuments, signage, recreation facilities, drainage facilities, public trails, sidewalks, fences, walls and plantings; provided, however, that Declarant may prescribe and transfer and any Developer may assume responsibility for completing the construction of any portion of the Common Elements in connection with the sale of any Unit or Units to such Developer. To the extent any Developer so assumes such construction obligations, or otherwise assumes or undertakes for Declarant to complete any infrastructure or other Improvements on the Property, or any public rights-of-way or public areas related thereto, such Developer shall become solely obligated to discharge such assumed responsibilities at its sole cost and expense, and shall become obligated to complete the applicable Improvements free and clear of any claims for mechanics' liens. If any such lien claims arise and are Recorded against any portion of the Property (other than property owned by the assuming Developer), the assuming Developer shall be obligated to secure a Recorded release and discharge of the claim within 30 days after the filing thereof, and shall indemnify the Declarant and the Association against any liability, loss, costs or expenses, including attorneys' fees, that either of them may incur in connection with the lien claim (including any sums that either of them may elect to pay to secure a release of the claim if the Developer fails to secure such release in accordance with the foregoing provisions). The Association at its election may agree to reimburse Declarant for sums incurred by Declarant which are indemnified under the foregoing provisions, in which case the Association's reimbursement obligation will also fall within the indemnity. All such indemnified amounts shall be due and payable within 30 days after demand therefor, and, if owed to the Association, may be levied as Specific Assessments against any Unit owned by such indemnifying Developer pursuant to Section 11.6(c). Declarant may also require that the assuming Developer, at the Developer's expense and prior to commencing construction, post or furnish performance and payment bonds for the assumed or undertaken Improvements in form and content satisfactory to Declarant, as well as notices which are sufficient under Colorado law to preclude any resulting mechanic's lien claim against the Property. Declarant (or a Developer who has taken title to such portions of the Property in connection with agreeing to construct the Improvements thereon) will convey those Common Elements to be owned by the Association (whether in fee simple or as an easement) to the Association by bargain and sale deed upon substantial completion of the Improvements to be located thereon (except that any conveying Developer shall furnish any warranties of title required pursuant to any agreement with Declarant). Common Elements that comprise Improvements located on or within public rights-

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of-way shall automatically become, to the extent provided in Section 2.12, the property of the Association upon Declarant's substantial completion of such Improvements.

(b) Conversions. For the duration of the Development Period, Declarant reserves the unilateral right to convert any Unit or other portion of the Property owned by Declarant into General Common Elements or Limited Common Elements, so long as the pertinent Unit or portion of the Property is owned by Declarant or by an Owner who has agreed to the conversion with Declarant. In addition, for the duration of the Development Period, Declarant reserves the unilateral right to convert any General Common Elements described on Exhibit C into Limited Common Elements and to allocate such Limited Common Elements among particular Units as Declarant, in its discretion, deems appropriate.

(c) Association's Obligation. The Association shall accept any grant, conveyance or dedication to it of any Common Elements made pursuant to this Declaration, whether by Declarant or by a Developer pursuant to an agreement with Declarant.

5.5 Plat Amendments. Declarant reserves the right to amend the Plat as it applies specifically to any Unit or other portion of the Property or owned by another Owner with such Owner's consent. By taking title, each Owner of any Unit covenants and agrees to furnish cooperation (including any consent or joinder as required by the County) in connection with and not object to such proposed amendment so long as the amendment is sought in a manner that complies with the procedures prescribed in the County's zoning ordinance. No Owner required to cooperate with a proposed amendment to the Plat pursuant to this Section shall be required to incur any costs or expenses in connection with such cooperation.

5.6 Succession to Declarant's Interests. The rights and interests reserved to or otherwise allocated in favor of Declarant under this Declaration may be assigned or transferred by Declarant, at its election and in whole or in part, to another Owner or other transferee, but only by an instrument expressly effectuating such assignment or transfer. Each transferee of any portion of the Property, by such transferee's acceptance of the transfer or conveyance of Record, shall be bound by and subject to all such rights and interests in favor of the Declarant hereunder, and the foregoing provisions governing the transfer of those rights and interests. Each such transferee and each Owner, and their successors in interest, shall be bound to execute and deliver such documents as Declarant may require from time to time in order to verify and confirm the rights and interests of Declarant hereunder.

5.7 Assignment to Developers. Declarant may assign and transfer to any Developer all of Declarant's rights and powers under Sections 5.1(f), 5.2, 5.5 and 5.6 of this Declaration and any other Development Rights created under this Declaration, with respect to those portions of the Property owned by such Developer.

ARTICLE VI **EASEMENTS**

6.1 Easement for Use, Access and Enjoyment in and to General Common Elements. Declarant hereby establishes and grants to each Owner a nonexclusive easement of use, access and enjoyment in and to the General Common Elements. Any Owner may extend its right of use and enjoyment to its Permittees (excluding, however, Permittees whose status as

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such derives from a commercial relationship) subject to reasonable regulation by the Board. Without limiting the generality of the foregoing, Declarant hereby grants to each Owner a nonexclusive perpetual easement over and across all walkways and other pedestrian access-ways, and all private drives, roads and streets designated as General Common Elements, including, without limitation, any access easements of Record, for the purpose of gaining pedestrian or vehicular access, as applicable, between (a) the public streets and sidewalks adjoining the Property and (b) any other General Common Elements or such Owner's Unit. The easement granted by this Section shall be appurtenant to and pass with the title to the Units and shall be subject to:

(a) This Declaration and any other applicable covenants, and any other easements, rights-of-way or other title matters Recorded against the Property;

(b) Any restrictions or limitations contained in any deed conveying the General Common Elements to the Association;

(c) The right of the Board to adopt Rules regulating the use and enjoyment of the General Common Elements in a manner consistent with their intended purpose, including rules limiting the number of guests who may use the General Common Elements;

(d) The right of the Board to impose membership requirements and charge admission or other use fees for the use of any recreational facility situated within or on the General Common Elements;

(e) The right of the Board to suspend any Owner's or such Owner's Permittees' right to use and enjoyment of any Common Elements (i) for any period during which any Assessment or charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation (or, in the case of a continuing violation, for the duration of such violation, plus a period not to exceed 30 days) of this Declaration, the Bylaws or the Rules, after providing such notice and hearing as may be required by the Bylaws;

(f) The right of the Board to permit use of any recreational facility situated within or on the General Common Elements by persons other than Owners and their Permittees upon payment of use fees established by the Board, which fees the Board shall include as Association revenue in calculating the amount of Common Assessments necessary to satisfy the Common Expenses of the Association;

(g) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the General Common Elements, subject to Section 16.3 and such other approval requirements as may be set forth in this Declaration or the Act; and

(h) The right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of the General Common Elements as security for money borrowed or debts incurred, subject to the limitations of the Act and the approval requirements set forth in Section 16.3.

6.2 Certain Easements for the Association. Declarant hereby establishes and grants to the Association a non-exclusive easement over each Unit and other portions of the

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Property (but excluding in any case the interior of any building improvements that do not constitute Common Elements) for the purpose of: (a) permitting the Association reasonable and necessary access to any of the Common Elements, Units and Improvements for the purpose of performing the maintenance, repair and replacement obligations relating to the Common Elements, Units and the Improvements delegated to the Association under this Declaration; and (b) installing, maintaining, repairing, replacing and improving landscaping, fencing, monumentation, signage, sidewalks, irrigation and water distribution systems, and utilities servicing any Common Elements; provided, however, that in using such easement, the Association shall not unreasonably interfere with any Owner's quiet use and enjoyment of such Owner's Unit.

6.3 Easements for Encroachments. In the event that, as a result of the construction, reconstruction, shifting, settlement, restoration, rehabilitation, alteration or improvement of any Improvement located on a Unit or the Common Elements or any portion thereof, any portion of any Unit or Common Elements now or hereafter encroaches upon any other Unit or Common Elements, Declarant hereby establishes and grants an easement for the continued existence and maintenance of such encroachment which will continue for so long as such encroachment exists and which will burden the Unit or Common Elements encroached upon and benefit the encroaching Unit or Common Elements. In no event, however, will an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Unit(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement, except for the following: (i) any encroachment of a driveway serving a Unit onto the adjacent Unit or Units, to the extent and in the location such driveway was originally constructed by the Declarant or the Developer; (ii) minor encroachments of Residences and/or the Party Wall onto the adjacent Unit, to the extent and in the location such Residence and/or Party Wall was originally constructed by the Declarant or the Developer; and (iii) any encroachment of the boundary wall, fencing, signage, landscaping or other Common Element onto one or more Units, to the extent and in the location of such encroachment as of the date this Declaration is Recorded.

6.4 Easements Benefiting Declarant. Declarant hereby reserves, and grants to each Developer, such easements over and across the Common Elements, which easements will exist for the duration of the Development Period, as may be reasonably necessary for Declarant's or a Developer's exercise of any Special Declarant Right, if applicable, performance of any of Declarant's obligations hereunder, and the showing of the Property to prospective purchasers. In addition, and without limiting the easements reserved in the preceding sentence, Declarant reserves an easement over the Property for the purpose of Declarant's use and enjoyment of any water or water rights appurtenant to or associated with the Property (including, without limitation, all adjudicated, non-adjudicated, decreed, non-decreed, tributary, non-tributary and not non-tributary water rights, ditch rights and well permits) owned by Declarant.

6.5 Easements for Utilities. Declarant reserves for itself and its successors, assigns and designees (including, without limitation and if so designated, the Association and its successors, assigns and designees), perpetual non-exclusive easements upon, across, over and under all of the Property (but not through any structures), to the extent reasonably necessary for

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the purposes of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals, and all utilities, including, without limitation, water, sewer, telephone, gas, electricity and storm and surface water drainage, and for installing any of the foregoing on property which Declarant, Developer or the Association, respectively, owns or within easements designated for such purposes on the Plat. This reserved right must be exercised, and any specific easements established pursuant thereto, no later than the expiration of the Development Period. The designees of Declarant and the Association may include, without limitation, any governmental or quasi-governmental entity and utility company. Declarant specifically grants to the local water supplier, cable television provider, telephone company, sanitary and/or storm sewer district or company, electric company, natural gas supplier and other utility providers easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other Recorded easement on the Property. Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of such easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit.

6.6 Easements for Driveways. Declarant hereby reserves, declares and creates perpetual easements ("Driveway Easements") for the purposes of providing private access to garages and for private driveway purposes (i) as may be depicted on the Plat, the current site plan for the Community, or future revision, amendment, modification or replat of all or any portion of either, which easements may or may not be designated thereon as an "access easement" or its substantial equivalent, or (ii) in such locations as paved driveways are originally constructed by the Declarant or the Developer.

(a) Non-Shared Driveways Easements. Driveway Easements that are located on a Unit, but do not include a shared driveway, shall be for the benefit of the adjacent Unit which is served by such driveway. Subject to the restrictions and limitations set forth in this Declaration, the Owner of the benefited Unit shall have the right to park vehicles in the paved portion of the Driveway Easement.

(b) Shared Driveways Easements. Driveway Easements that are located on a Unit and include a shared driveway, shall be shared easements for the benefit of both of such Units, to the extent reasonably required to provide vehicular and pedestrian access to the respective Units. The Owners of the Units shall not have the right to park vehicles in the Driveway Easement which contains a shared portion of a driveway or in any other manner which would impede the reasonable shared usage of such driveway.

6.7 Easements for Patios and Decks. Declarant hereby reserves, declares and creates perpetual easements ("Patio and Deck Easements") for the purposes of patio and deck encroachments into the Common Elements (i) as may be depicted on the current site plan for the Community, or any future revision, amendment, modification or replat of all or any portion thereof, or (ii) in such locations as patios and/or decks are originally constructed by the Declarant or the Developer. The portions of the patio or deck Improvements occupying such Patio and Deck Easements shall be Limited Common Elements allocated to the Unit which is served by such patio or deck Improvements.

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6.8 Right of Entry. Declarant reserves for the Association and other Persons described below an easement for the right, but not the obligation, to enter upon any Unit: (i) for emergency, security and safety reasons; (ii) to inspect any Unit for the purpose of ensuring compliance with this Declaration, the Bylaws and the Rules; and (iii) to remove nonconforming Improvements as provided in Section 13.8. Such right may be exercised by any member of the Board and the Association's officers, agents, employees and managers, the members of the Architectural Review Committee pursuant to Article XIII, and, for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure such condition within a reasonable time after requested by the Board, but shall not authorize entry into any Residence without permission of the occupant, except by emergency personnel acting in their official capacities.

6.9 Easements for Water Use and Development and Flood Control. Declarant reserves for itself and its successors, assigns and designees, for the duration of the Development Period, and Declarant hereby establishes and grants to the Association in perpetuity, as Limited Common Elements, the nonexclusive right and easement, but not the obligation, to enter upon any lakes, reservoirs, ponds, streams, drainage ditches, irrigation ditches and wetlands located within the Common Elements: (a) to provide water for the irrigation of any of the Common Elements and/or Units; (b) to alter drainage and water flow; (c) to construct, maintain, operate and repair any bulkhead, wall, dam or other structure retaining water; (d) to develop, maintain, rehabilitate, restore, repair and protect wetlands, shorelines, beaches, waterways and other lakefront and reservoir-front areas; and (e) to remove trash and other debris therefrom. Such easement shall include an access easement over and across the Property, to the extent reasonably necessary to exercise rights granted under this Section, and in order to maintain and landscape the slopes and banks pertaining to such lakes, reservoirs, ponds, streams, drainage ditches and wetlands. To the extent the exercise of such easement is anticipated to materially diminish the value of or unreasonably interfere with the use of any Unit, the consent of the Owner of such Unit shall be required before such exercise. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

6.10 Additional Easements.

(a) Declarant's Right to Grant Easements. Declarant hereby reserves the non-exclusive right and power to grant, during the Development Period, such additional specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any of the Property; provided, however, that such easements may not materially adversely affect the use or contemplated use, enjoyment or value of any of the Property by the Owners.

(b) Association's Right to Grant Easements. Notwithstanding anything to the contrary in Sections 14.9, 16.3 or other Sections of this Declaration, the Association, acting through the Board and without the approval of the members of the Association, may grant easements over the Common Elements for installation and maintenance of utilities, drainage facilities and roads and for other purposes not inconsistent with the intended use of the Common Elements.

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6.11 Easements Run with Land. Except as otherwise provided in this Article VI, all easements established and granted pursuant to this Article VI are appurtenant to and run with the Property and will be perpetually in full force and effect so long as this Declaration is in force and will inure to the benefit of and be binding upon Declarant, the Association, Owners, Permittees and any other Persons having any interest in the Property or any part thereof. The Units and the Common Elements will be conveyed and encumbered subject to all easements set forth in this Article VI, whether or not specifically mentioned in such conveyance or encumbrance.

ARTICLE VII PARTY WALLS

7.1 Declaration of Party Walls. Each Party Wall is hereby declared to be a party wall appurtenant to the Units on which the respective Residences sharing such Party Wall are located, if applicable. The Owner of each Unit sharing a Party Wall shall be deemed to own an undivided one-half interest in such Party Wall, together with the necessary or appropriate easements for the perpetual lateral and subjacent support, maintenance, repair and inspection of the Party Walls, and with equal rights of joint use of such Party Wall. Each Owner of a Party Wall shall have an easement in, under and over the adjacent Residence and Unit, to the extent reasonably necessary, upon reasonable advance notice, and in a mutually coordinated manner resulting in the least practical disruption of the use of the Residences by the Owners, to perform all necessary repairs, reconstruction and maintenance of such Party Wall. To the extent not inconsistent with the terms and conditions hereof, this Declaration shall be subject to the general rules of law of the State of Colorado concerning party walls.

7.2 Restrictions on Use. Neither Owner shall have the right to destroy, remove or make any structural changes in the Party Wall constituting a portion of such Owner's Residence which would jeopardize the structural integrity of either of the Residences without the prior written consent of the Owner and the First Mortgagee of the other Residence sharing the Party Wall. Neither Owner of a shared Party Wall shall subject the Party Wall or such Owner's Residence to any use which in any manner whatsoever interferes with the equal use and enjoyment of the Party Wall or the adjacent Residence by the other Owner.

7.3 Intentional or Negligent Damage or Destruction. In the event that a Party Wall is damaged or destroyed by the intentional or negligent act or omission of either Owner thereof or such Owner's Permittee, such Owner shall promptly restore and repair the Party Wall and shall compensate the other Owner for any damages sustained to person or property as a result of such intentional or negligent act or omission, subject to the provisions of Section 14.2 hereof.

7.4 Other Damage or Destruction; Ordinary Maintenance. Subject to the terms and conditions of Article VII and Article XIV, in the event that a Party Wall is damaged or destroyed by causes other than the intentional or negligent act or omission of either Owner or such Owner's Permittee, or otherwise requires maintenance or repair, the damaged or destroyed Party Wall shall be repaired or rebuilt, or such other maintenance and repairs shall be performed, at the equally shared expense of both Owners, subject to the provisions of Section 14.2 hereof;

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provided, however, that each Owner shall be solely responsible for the non-structural repair and maintenance of the interior surfaces of the Party Wall located within such Owner's Residence. In the event that the Owners of a shared Party Wall are unable to agree on whether certain maintenance or repair of the Party Wall is necessary or appropriate, or the scope or nature of any such maintenance or repair, either Owner may submit the dispute to the Board for determination. Upon submission to the Board, the Board, acting by a majority, shall determine the necessary maintenance or repair, if any, and the scope and nature thereof, and such determination shall be binding upon both Owners.

7.5 Right of Contribution. Any contributions or other amounts payable between the Owners of a Party Wall under this Article VII shall be subject to the provisions of this Section 7.5

(a) **Personal Obligation.** The amount so payable, together with interest computed from the date 30 days after the delivery to the non-contributing Owner of written notice seeking payment, at 21% per annum, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Unit against which the payment is charged until paid, as more particularly provided in Section 7.5(d). Such contribution payment, together with such interest, costs and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time such expenses were incurred. No holder of a First Mortgage who becomes the Owner of a Unit by exercising the remedies provided in its Mortgage shall be personally liable for unpaid contributions which accrued prior to such acquisition of title. Nothing in this Declaration is intended or shall be construed to limit the liability of a First Mortgagee (or its foreclosure purchaser or other successors in interest) who becomes the Owner of a Unit for any contributions accruing against such Unit while such First Mortgagee is the Owner of it.

(b) **Terms of Payment.** Contributions shall be paid immediately upon written demand.

(c) **Estoppel Certificate.** Within 10 business days after receipt of a written request from any Owner or Mortgagee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to an Owner or its registered agent, such Owner shall furnish to such other Owner or Mortgagee, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate in writing signed by the Owner and addressed to such other Owner or Mortgagee, or the designee of either, stating any then unpaid contribution under this Article VII due from the requesting Owner or the Owner of the Unit encumbered by such Mortgagee's Mortgage, or stating that there are no unpaid contributions due from such Owner. Such an estoppel certificate executed in favor of an Owner, Mortgagee or other Persons named therein who rely thereon in good faith will be conclusive upon the Owner providing such estoppel certificate as to the matters set forth therein and such Owner's Unit will not be subject to a lien for any unpaid contributions against such Unit arising before the date of such certificate and in excess of any unpaid amounts stated in such certificate.

(d) **Perfection and Priority of Lien.** The Owner seeking contribution shall have a lien against the non-contributing Owner's Unit to secure payment of delinquent contribution, as well as interest (computed from the date 30 days after the delivery to the

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non-contributing Owner of written notice seeking payment, at a rate of 21% per annum), costs and reasonable attorneys' fees. Such lien shall be perfected upon the Recording of a "Notice of Lien" which sets forth (i) the amount of the unpaid contribution, due and owing to the other Owner; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a recitation of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Unit encumbered by the lien; and (v) the name or names, last known to the Owner seeking contribution, of the Owner of the Unit. Such lien shall be junior and subordinate to: (i) the liens of all taxes, bonds, assessments and other levies which by law are superior; (ii) the lien or charge of any First Mortgage made in good faith for value; (iii) any lien of the Association under this Declaration; and (iv) any Mortgage, lien or other charge against the Unit which is of Record and otherwise perfected prior to the recording of such Notice of Lien.

(e) Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Colorado. The Owner seeking contribution may bid for a Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey such Unit. The Owner seeking contribution may sue for unpaid contributions and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(f) Transfer of Unit. The sale or transfer of any Unit shall not affect an existing perfected lien for previous unpaid contributions or relieve such Unit from any lien for subsequent unpaid contributions.

ARTICLE VIII
SPECIAL DECLARANT RIGHTS

8.1 Special Declarant Rights. In addition to and without limiting any other right reserved by or for the benefit of Declarant in this Declaration or by operation of the Act (all of which shall also be Special Declarant Rights), Declarant reserves the following Special Declarant Rights, which, except as expressly provided below, may be exercised by Declarant for the duration of the Development Period, with no limitations on the extent to, or the order in which, such rights are exercised:

(a) To complete any Common Elements Improvements described on or in the Plat or this Declaration (and to transfer the right and obligation to complete any such Improvements to any Developer);

(b) To exercise any of the Development Rights;

(c) To maintain sales, construction and management offices and advertising signs on the Property, as set forth in Section 8.3;

(d) To merge or consolidate the Association with another common interest community of the same form of ownership; and

(e) To appoint and remove the Directors and the officers of the Association during the Declarant Control Period to the extent permitted by the Act.

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8.2 Transfer of Special Declarant Rights. Declarant may transfer any or all of the Special Declarant Rights in accordance with Section 304 of the Act.

8.3 Models and Offices. During the Development Period, Declarant and any Developer authorized by Declarant may maintain and carry on upon any Unit owned by such Person (or any other Unit with consent of its Owner) or any portion of the Common Elements such facilities and activities as, in the reasonable opinion of Declarant or any Developer authorized by Declarant, may be required, convenient or incidental to the development, construction or sale of Units, including, without limitation, business offices, construction offices, management offices, signs, model units and sales offices. Such facilities may be of a number, size and location which Declarant determines shall adequately accommodate Declarant's or a Developer's development, sale and marketing of the Units and the Property. Notwithstanding anything in this Declaration to the contrary, each Developer shall have the right to maintain models and sales offices within the boundaries of any Unit owned by such Developer.

8.4 Other Covenants and Supplemental Declarations. During the Development Period, no Person shall Record any declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument affecting any portion of the Property, including, without limitation, a Supplemental Declaration, without Declarant's review and written, Recorded consent as to the form and content of such instrument. Any attempted Recording of such an instrument without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by a written consent signed by Declarant and Recorded. Without limiting the foregoing, any Supplemental Declaration shall: (a) expressly refer to this Declaration by its name and Recording information; (b) provide that each "unit" (as defined in the Act) created by or subject to such Supplemental Declaration is also subject to the terms and provisions of this Declaration; and (c) provide that the Association established pursuant to this Declaration shall have all the powers set forth for it in this Declaration, the Bylaws and the Act (including, without limitation, the powers identified in Section 302(1)(b) of the Act) and shall be permitted to exercise those powers with respect to the portion of the Property subject to such Supplemental Declaration. Notwithstanding the preceding sentence, a Subsidiary Association may have and exercise all powers permitted under the Act, subject to this Declaration.

8.5 Delegation to Master Association. Without limiting any of the Association's other rights of delegation, the Association may delegate, exclusively or non-exclusively, any powers, rights or obligations under this Declaration to the Master Association, to the extent permitted by the Act and subject to the consent of the Master Association.

ARTICLE IX

BOUNDARY RELOCATION AND SUBDIVISION OF UNITS

9.1 Relocation or Removal of Boundaries Between Adjoining Units.

(a) Requirements. The boundaries between adjoining Units may be relocated or removed by a Supplemental Declaration upon application to the Association by the Owners of such Units (or the Owner, in the case of a removal) pursuant to this Section. In order to relocate or remove the boundaries between adjoining Units, the Owners of those Units, as the

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applicant, must submit an application to the Board, which application shall be executed by those Owners and shall include:

(i) Evidence demonstrating to the Board that the applicant has complied, and that the proposed boundary relocation or removal will comply, with all applicable rules, regulations and ordinances of the County and that the proposed boundary relocation or removal will not violate the terms of any Mortgage;

(ii) The proposed reallocation of Common Allocations and Voting Units among the Units, if applicable;

(iii) The proposed form of Supplemental Declaration, including amendments to the Plat, as may be necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers, and any other information required pursuant to the Act;

(iv) A deposit against attorneys fees and other costs that the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and

(v) Such other information as may be reasonably requested by the Board.

(b) Approval of Relocation or Removal. The Board shall approve any application for relocation of boundaries between adjoining Units properly made under this Section if: (i) the application satisfies the requirements of Section 9.1(a); (ii) the proposed relocation or removal of boundaries in fact will comply with all applicable rules, regulations and ordinances of the County and will not violate the terms of any Mortgage; (iii) the form of Supplemental Declaration submitted by the applicant is sufficient to effectuate the proposed relocation or removal of boundaries in compliance with the terms of this Declaration and the Act; and (iv) such relocation has been approved by the Design Review Committee in accordance with the Master Association. During the Development Period any proposed relocation or removal of boundaries between adjoining Units, shall also require the written consent of Declarant, which consent shall not be withheld so long as the proposed relocation or removal satisfies the requirements of clauses (i), (ii) and (iii) of this Section 9.1(b).

(c) Execution and Recording. No relocation or removal of boundaries between adjoining Units shall become effective until a Supplemental Declaration and, if necessary, an amendment to the Plat meeting the requirements of the Act have been executed and Recorded pursuant to Sections 217(3) and (5) of the Act.

(d) Costs. All costs and attorneys fees incurred by the Association as a result of an application for relocation or removal of boundaries between adjoining Units shall be the sole obligation of the Owner or Owners requesting such relocation and may be assessed against the Unit(s) of such Owner or Owners as a Specific Assessment.

9.2 Subdivision of Units. No Unit may be subdivided into two or more Units.