

201000407513
Filed for Record in
RIO GRANDE
SANDRA J JACKSON
01-22-2010 At 01:18 PM.
AMD DECL 271.00
State Doc 0.00
OR Book 547 Page 621 - 674

Instrument	Book	Page
201000407513 OR	547	621

AMENDED AND RESTATED DECLARATION
RIVER CLUB AT SOUTH FORK RANCHES

CURRENT ADDRESS OF THE ASSOCIATION:
SOUTH FORK RIVER CLUB LLC
0994 COUNTY ROAD 15
SOUTH FORK, COLORADO 81154

Note that this address may be changed from time to time pursuant to Section 5.2 and Section 17.6 below.

TABLE OF CONTENTS

Instrument 201000407513 OR Book 547 Page 622

ARTICLE 1 SUBMISSION OF RIVER CLUB AT SOUTH FORK RANCHES, NUMBER OF UNITS IN ASSOCIATION, AND DEFINED TERMS 2

1.1 **Submission of River Club at South Fork Ranches 2**

1.2 **Number of Units 2**

1.3 **Unit Boundaries 2**

1.4 **Acknowledgement of Master Declaration and the Master Association 2**

 (a) Conditions, Covenants and Restrictions of Master Association 3

 (b) Master Association and Owners' Rights of Use 3

 (c) Association Cooperation 3

1.5 **Definitions 3**

 (a) Allocated Interests 3

 (b) Articles of Incorporation 3

 (c) Assessments 3

 (d) Association 4

 (e) Bylaws 4

 (f) Common Elements 4

 (g) Common Expense Assessment 4

 (h) Common Expenses 5

 (i) County 5

 (j) Covenants 5

 (k) Declarant 5

 (l) Declaration 6

 (m) Default Assessments 6

 (n) Design Guidelines 6

 (o) Design Review Committee 6

 (p) Districts 6

 (q) Executive Board 6

 (r) Exterior Improvements 6

 (s) First Mortgage 7

 (t) First Mortgagee 7

 (u) Governing Documents 7

 (v) Improvement 8

 (w) Landscape Requirements 8

 (x) Landscaping 8

 (y) Plat 8

 (z) Master Association 9

 (aa) Master Association Covenants 9

 (bb) Owner 9

 (cc) Related User 9

 (dd) Rules and Regulations 9

 (ee) Special Assessments 9

 (ff) Turnover Date 9

(gg) Unit 10

ARTICLE 2 GENERAL STATEMENT OF COVENANTS..... 10

 2.1 **Covenants Bind River Club** 10

 2.2 **Owners' Easements of Enjoyment**..... 10

 2.3 **Authorized Users**..... 11

ARTICLE 3 COMMON ELEMENTS..... 11

 3.1 **Description of Common Elements**..... 11

 3.2 **Maintenance of Common Elements** 11

ARTICLE 4 OPERATION OF THE ASSOCIATION 12

 4.1 **Formation** 12

 4.2 **Executive Board** 12

 4.3 **Membership in Association** 12

ARTICLE 5 THE ASSOCIATION..... 13

 5.1 **General Purposes and Powers** 13

 5.2 **Address of the Association** 13

 5.3 **Powers and Duties**..... 13

 5.4 **Enforcement** 14

 5.5 **Association Agreements**..... 15

 5.6 **Indemnification** 15

 5.7 **Governmental Interests** 15

 5.8 **Right to Notice and Comment** 15

 5.9 **Disclaimer Regarding Security**..... 16

 5.10 **Compliance with Declaration**..... 16

ARTICLE 6 UNIT MAINTENANCE RESPONSIBILITIES 18

 6.1 **Owner's Responsibility**..... 18

 (a) **Structural Maintenance** 18

 (b) **Owner Installed Landscaping** 18

 6.2 **Association Responsibility**..... 18

 (a) **Landscaping** 18

 (b) **General Unit Improvements and Maintenance** 19

 (c) **Maintenance of Exterior Improvements** 19

 6.3 **Standard of Performance** 19

ARTICLE 7 COVENANT FOR COMMON EXPENSE ASSESSMENT..... 20

 7.1 **Creation of Association Lien and Personal Obligation To Pay Common Expense Assessments** 20

 7.2 **Apportionment of Common Expenses** 20

 7.3 **Purpose of Assessments** 21

 7.4 **Annual Assessment/Commencement of Common Expense Assessments**..... 21

 7.5 **Lien Priority** 22

	Instrument	Book	Page
	201000407513	OR 547	624
7.6	Special Assessments		22
7.7	Effect of Non-Payment of Assessments		23
7.8	No Waiver or Abandonment		23
7.9	Declaration is Notice		23
7.10	Real Property Taxes/Utility Charges		24
ARTICLE 8	DESIGN REVIEW		24
8.1	General		24
8.2	Interior Unit Changes		24
8.3	Modification after Occupancy		25
8.4	Design Review Responsibility		25
8.5	Design Review Committee		25
8.6	Guidelines and Procedures General		25
8.7	Submission of Application		26
8.8	Criteria for Approval		26
8.9	Decision of Committee		26
8.10	Failure to Act		27
8.11	No Waiver of Future Approvals		27
8.12	Prosecution of Work		27
8.13	Notice of Completion		27
8.14	Inspection		27
8.15	Enforcement		27
8.16	Liability of Design Review Committee and Executive Board Members		28
8.17	Variances		28
8.18	Scope of Judicial Review		28
ARTICLE 9	RESTRICTIVE COVENANTS		28
9.1	Owners' Acknowledgment		28
9.2	Right of Owners		29
9.3	Prohibited Activities		29
	(a) Subdivision		29
	(b) Commercial Activities		30
	(c) Non-Offensive		30
	(d) Leases		30
	(e) Nuisances		30
	(f) Vehicles		31
	(g) Animals		31
	(h) Vegetation		31
	(i) Grade		31
	(j) Satellite Dishes; Exterior Apparatus		32
9.4	Use Restrictions		32
	(a) Parking		32
	(b) Use		32
	(c) Exterior Lighting Fixtures		32

	Instrument 201000407513 OR	Book 547	Page 625
ARTICLE 10 EASEMENTS AND RESERVATIONS			32
10.1 Easements of Encroachment.....			32
10.2 Easements for Utilities.....			33
10.3 Easements Over Common Elements			33
10.4 Easements Over Unit Areas			33
10.5 Right of Entry.....			34
ARTICLE 11 MORTGAGEE PROVISIONS.....			34
11.1 Special FHLMC Provision			34
11.2 Institutional First Mortgagees			35
11.3 Amendment by the Executive Board.....			35
11.4 Failure of Mortgagee to Respond			35
11.5 HUD/VA Approval.....			35
ARTICLE 12 INSURANCE/CONDEMNATION			35
12.1 General Requirements.....			35
12.2 Claim Submittal			36
12.3 Association Liability Insurance			36
12.4 Fire and Casualty Insurance.....			36
12.5 Association Worker's Compensation and Employer's Liability Insurance ..			37
12.6 Association Fidelity Insurance.....			37
12.7 Association Officers' and Directors' Personal Liability Insurance.....			37
12.8 Other Insurance			37
12.9 Allocation of Insurance Costs and Expenses			37
12.10 Condemnation			37
ARTICLE 13 RESERVATION OF DECLARANT RIGHTS			37
13.1 Special Declarant Rights			37
(a) Conveyance for Governmental Interests.....			38
(b) Completion of Improvements			38
(c) Exercise of Development Rights			38
(d) Sales Management and Marketing.....			38
(e) Construction Facilities			38
(f) Construction Easements.....			38
(g) Merger.....			38
(h) Control of Association and Executive Board.....			38
(i) Amendment of Declaration.....			38
(j) Use Agreements.....			38
(k) Other Rights.....			38
13.2 Subject Real Estate			39
ARTICLE 14 DEVELOPMENT AND WITHDRAWAL RIGHTS			39
14.1 Development and Withdrawal Rights.....			39
14.2 Exercise of Development Rights			39
14.3 Amendment of the Declaration.....			39

	Instrument	Book	Page
14.4	201000407513	OR 547	626
14.4	Interpretation		40
14.5	Rights Incident to the Construction Easement		40
14.6	Reciprocal Easements		40
14.7	Termination of Development Rights		41
ARTICLE 15	AMENDMENT AND TERMINATION		41
15.1	Technical, Clerical, Typographical or Clarification Amendment		41
15.2	Amendments Necessary to Exercise Authority of Association Documents ..		41
15.3	Attorney in Fact		41
15.4	Amendment of Declaration by Owners		41
15.5	Amendment Required by Mortgage Agencies		42
15.6	Recording of Amendments		42
15.7	Association Certification		42
15.8	Expenses		42
15.9	Termination		43
ARTICLE 16	ALLOCATED INTERESTS		43
16.1	Formula for Determining Allocated Interests		43
	(a)	Percentage Share of Common Expenses and Percentage Share of Ownership of Common Elements	43
	(b)	Voting	43
16.2	Allocation Between Improved and Unimproved Units		43
16.3	Fractional Voting		43
16.4	Reallocation		44
ARTICLE 17	GENERAL PROVISIONS		44
17.1	Rights Transferable/Rights Transferred		44
17.2	Attorneys' Fees		44
17.3	Severability		44
17.4	Paragraph Headings		44
17.5	Notice Addresses		44
17.6	Address of the Association		45
17.7	Gender		45
17.8	Jurisdiction and Venue; Applicable Law		45
17.9	Binding Agreement		45
17.10	Reference to Ownership Interests		45
17.11	Non-Dedication of Common Elements		45
17.12	References to Declaration		45
17.13	No Liability for Nuisances/Hazards Associated with Adjacent Lands		45

AMENDED AND RESTATED

Instrument Book Page
201000407513 OR 547 627

DECLARATION FOR

RIVER CLUB AT SOUTH FORK RANCHES

THIS AMENDED AND RESTATED DECLARATION FOR RIVER CLUB AT SOUTH FORK RANCHES ("Declaration"), is effective when recorded in the Office of the Clerk and Recorder for Rio Grande County, Colorado.

RECITALS

I. On April 12, 2005 in Book 0519 at Page 1941, South Fork River Club LLC, a Colorado limited liability company ("SFRC") as "Declarant" caused to be executed and recorded that certain, "Declaration for River Club at South Fork Ranches, A Planned Community Located in Rio Grande County, Colorado" ("Original Declaration").

II. The Original Declaration together with the Plat described below created a common interest community under the terms of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq.* (as the same may be amended from time to time, the "Act") on the real property described therein and on Exhibit A attached hereto, as the same may be enlarged, contracted or modified as provided in the Original Declaration and restated herein (the "Real Estate").

III. The common interest community created on the Real Estate is a planned community, commonly known as "River Club at South Fork Ranches" (the "Community"), as provided for by the Act.

IV. River Club at South Fork Ranches is located within a common interest community known as "South Fork Ranches, a Master Planned Community" ("South Fork Ranches"), and, therefore, is subject to the "Master Declaration of Covenants, Conditions and Restrictions for South Fork Ranches recorded on November 28, 2000 in Book 0493 at Page 732 in the real property records of Rio Grande County, Colorado (the "Master Declaration"), as the same may be amended from time to time.

V. River Club Homeowners' Association, Inc., a nonprofit corporation (the "Association") was incorporated under the laws of the State of Colorado for the purpose of exercising the functions to be exercised by the Association as set forth in the Original Declaration and as restated herein.

VI. The Association is a "Subassociation" (as that term is defined in the Master Declaration), to act as the unit owners association for River Club at South Fork Ranches to maintain the same as an exceptional, desirable and pleasant community for all of its residents.

conditions, restrictions and easements contained in the Master Declaration. Conditions, Covenants and Restrictions of Master Association. The covenants, conditions and restrictions contained in the Original Declaration and as restated herein shall be no less restrictive than those contained in the Master Declaration. To the extent there exists a conflict between the covenants, conditions and restrictions contained in the Master Declaration and this Declaration, the more restrictive covenant, condition or restriction shall control. The Declarant and the Executive Board of the Association shall comply with the Master Declaration in developing River Club.

(b) Master Association and Owners' Rights of Use. The Declaration hereby grants to the Association and to the Owners within the River Club at South Fork Ranches community the right to use and enjoy the Common Elements, subject to the conditions, covenants and restrictions contained in this Declaration. The Association's rights of use to the Common Elements shall be exercised in a consistent and non-discriminatory manner, and at all times in accordance with the conditions, covenants and limitations contained in this Declaration.

(c) Association Cooperation. The Declarant and the Executive Board of the Association shall endeavor to minimize any duplication of effort by the Executive Boards of the Master Association and other Subassociations in order to promote the efficient and effective development of River Club at South Fork Ranches in accordance with all of the Governing Documents.

1.5 **Definitions.** The terms and phrases used in this Declaration shall have the same definitions indicated in the Master Declaration, except to the extent this Declaration expressly provides otherwise. Any reference to association documents, assessments or entities in this Declaration shall be a reference to the documents, assessments and entities established by or for the benefit of River Club at South Fork Ranches through this Declaration, or related River Club at South Fork Ranches Governing Documents. Reference in this Declaration to any documents, assessments or entities established or provided for in the Master Declaration shall be denoted by a specific reference to the Master Declaration or the Master Association. To the extent not inconsistent with the definitions contained herein, the definitions contained in Section 38-33.3-103 of the Act are incorporated herein by reference. Any terms which are defined in the Act, the Master Declaration and this Declaration shall be deemed to encompass all definitions to the extent such definitions are not inconsistent. In the case of any inconsistency, to the extent permitted by law, the definitions provided in this Declaration shall control. Subject to the foregoing, the terms listed below when used herein shall have the following meaning:

(a) Allocated Interests. The Common Expense liability and votes in the Association allocated to each Unit pursuant to the terms of the Declaration.

(b) Articles of Incorporation. The Articles of Incorporation for River Club at South Fork Ranches Association, Inc., a Colorado nonprofit corporation.

(c) Assessments. Collectively, any Common Expense Assessments, any Special Assessments, Default Assessments, assessments for reserves, assessments by class of owners, assessments related to assigned Limited Common Elements, insurance assessments, and

VII. The Original Declaration created a superior, wholesome and attractive common interest community where the Association is responsible for certain work required to maintain the exterior of the Units, and to design, install and maintain Landscaping within River Club at South Fork Ranches, including Unit Landscaping, and where the Association undertakes such additional responsibilities as the Executive Board determines is necessary to ensure the exceptional, desirable and pleasant environment for all of its residents.

VIII. The Original Declaration (and this Declaration as provided below) complements and supplements the covenants, conditions, restrictions and easements contained in the Master Declaration for the benefit of Owners in River Club at South Fork Ranches, and their respective successors and assigns.

IX. Every Owner within River Club at South Fork Ranches shall automatically be a member of both the Master Association and a member of the Association.

ARTICLE 1

SUBMISSION OF RIVER CLUB AT SOUTH FORK RANCHES, NUMBER OF UNITS IN ASSOCIATION, AND DEFINED TERMS

1.1 **Submission of River Club at South Fork Ranches.** Pursuant to the Original Declaration, and as restated by this Amended and Restated Declaration, the Declarant, as the owner in fee simple of the Real Estate, submitted the Real Estate and all Improvements to be constructed thereon and all appurtenant rights and easements, together with such additional real property as may be made subject to the Original Declaration. The Original Declaration provided that all of the Real Estate shall be held, sold, and conveyed subject to the easements, covenants, conditions and restrictions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with the land and shall be binding on all parties having any right, title or interest in the Real Estate, or any part thereof, and their respective heirs, legal representatives, successors, and assigns, and shall inure to the benefit of each Owner, in perpetuity.

1.2 **Number of Units.** The number of Units initially included in the Community was fifty-six (56) and all such Units are shown as Lots on the Plat. In the Original Declaration, the Declarant reserved the right, and continues to restate such right, to create and add such additional Units up to the maximum number of Units allowed by any governmental entity having jurisdiction over River Club. Fifty-six or such maximum number of Units as may be so permitted, whichever is greater, shall be the "maximum number of Units that may be created," as this term is used herein and in the Act.

1.3 **Unit Boundaries.** The exact boundaries of all Units are depicted on the Plat as Lot lines, and each Unit is also subject to one or more party wall agreements with the adjoining Unit.

1.4 **Acknowledgement of Master Declaration and the Master Association.** Declarant hereby acknowledges and affirms that River Club is subject to the covenants,

any other assessment made to accomplish the purposes set forth in this Declaration to establish an exceptional, pleasant and desirable environment for the River Club at South Fork Ranches residents. All Assessments are treated and collectible as Common Expense Assessments.

(d) Association. River Club Homeowners' Association, Inc., a Colorado non-profit corporation, and its successors and assigns.

(e) Bylaws. The bylaws of the Association, as the same may be amended from time to time.

(f) Common Elements. All real and personal property within River Club at South Fork Ranches that the Association owns or leases for the common use and enjoyment of the Owners, including the General and Limited Common Elements described as follows:

(i) General Common Elements. All real and personal property within River Club at South Fork Ranches that the Association owns or leases which is not a Limited Common Element. The General Common Elements in that portion of River Club at South Fork Ranches are described as Tracts 1 through 4 on the Subdivision Plat for River Club at South Fork Ranches, including both Greenbelt General Common Elements and Motor Court General Common Element as follows:

(1) Greenbelt General Common Elements. A General Common Element designated for landscape improvements to include, without limitation, trees, hedges, plantings, shrubs, sod or grass, or landscape bark or rock to enhance the exceptional, pleasant and desirable environment of the River Club at South Fork Ranches. The Greenbelt General Common Elements are described as "Greenbelt General Common Element Tracts 1, 2, and 3" on the Subdivision Plat for River Club at South Fork Ranches, and are depicted as a Greenbelt General Common Element on the Plat.

(2) Motor Court General Common Element. A General Common Element which shall be paved and maintained in a condition adequate for motor vehicle traffic and parking. The Motor Court General Common Element is described as "Motor Court General Common Element Tracts 1-12" on the River Club at South Fork Ranches, and is depicted as a Motor Court General Common Element on the Plat.

(ii) Limited Common Elements. Those Common Elements which are either assigned, limited to or reserved in this Declaration or on the Plat, in a recorded certificate executed by Declarant, a recorded Amendment to this Declaration executed by Declarant, or by action of the Association, for the primary use of one or more but fewer than all of the Owners.

(g) Common Expense Assessment. In addition to the definition included in the Act, these terms shall include the following items levied against a particular Owner or Unit: (i) each Owner's Allocated Interest in the Common Expenses; (ii) late charges, attorneys' fees, fines, and interest charged by the Association at the rate as determined by the Executive Board; (iii) Special Assessments; (iv) Default Assessments; and (v) any other sums which may be charged to any Owner or levied against a Unit pursuant to the Governing Documents or the Act.

(h) Common Expenses. All expenditures made and all liabilities incurred by or on behalf of the Association to fulfill the obligations contained in this Declaration, together with any allocation to reserves. Common Expenses shall include, without limitation, the following:

(i) All expenses expressly declared to be Common Expenses by this Declaration or the Governing Documents;

(ii) All other expenses of administering, servicing, conserving, managing, securing, maintaining, cleaning, repairing or replacing the Common Elements;

(iii) The expenses of administering, servicing, conserving, managing, securing, maintaining, cleaning, repairing or replacing Improvements to the Units installed or maintained by the Association;

(iv) Snow removal from the Common Elements and the Units;

(v) Insurance premiums for the insurance carried under ARTICLE 12;

(vi) Legal fees, accounting fees and management fees for the Association as provided for herein;

(vii) The creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general routine maintenance, repairs and replacement of Improvements within the General Common Elements on a periodic basis, as needed; and

(viii) All expenses lawfully determined to be Common Expenses by the Declarant or the Executive Board or which are required to fulfill the Association's obligations hereunder.

(i) County. Rio Grande County, Colorado.

(j) Covenants. All agreements, restrictions, reservations, conditions, terms, easements, and rights-of-way set forth or referenced in this Declaration as it may be amended from time to time, or in the River Club Governing Documents or in the Master Association Governing Documents or in any other related agreement or document provided to Owners and Related Users governing the ownership, occupancy, use or enjoyment of Units within River Club.

(k) Declarant. South Fork River Club, LLC, a Colorado limited liability company, and any Person or group of Persons which succeeds to all or any portion of the Declarant's rights and/or duties or of any successor duly designated in accordance with this definition and the Act ("Transferee Declarants"). Any Transferee Declarant must be so identified by means of an express written assignment executed and acknowledged by Declarant and the duly designated successor Declarant, and recorded in the County's real property records.

References in this Declaration to "Declarant" shall include all Transferee Declarants unless specifically provided otherwise.

(l) Declaration. This Declaration, as the same may be amended, supplemented and restated at any time and from time to time, and including any maps or subdivision plats from time to time relating to River Club at South Fork Ranches which are recorded in the County's real property records.

(m) Default Assessments. Collectively, (i) all late charges, fines, and default interest, at a rate or in an amount determined by the Executive Board, and all costs and attorneys' fees charged by the Association against an Owner who fails to pay his or her share of the Common Expenses in a timely manner; and (ii) all charges imposed against a particular Owner and his or her Unit for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any Owner's or Related User's violation of the Governing Documents. Default Assessments shall be treated and collected as Common Expense Assessments.

(n) Design Guidelines. Collectively, all written design and development guidelines, policies, application and review procedures and fee schedules, and all architectural controls which apply to all construction and other improvement activities within River Club at South Fork Ranches. Design Guidelines may be enacted by the Design Review Committee in accordance with this Declaration. River Club at South Fork Ranches shall be governed by both the Design Guidelines and the Master Association Design Guidelines as they may be periodically revised or amended.

(o) Design Review Committee. The Committee appointed by the Declarant (and, upon the expiration of the Declarant's right to appoint this Committee, the Board) for the purpose of establishing architectural control over River Club to insure proper, appropriate and harmonious development and improvement, including the enforcement of the Design Guidelines, Owner's maintenance responsibilities and other provisions of the River Club Governing Documents.

(p) Districts. South Fork Water and Sanitation District, San Luis Valley Water Conservancy District, Del Norte Fire Protection District, and any other metropolitan, special improvement or other type of special district organized for the purpose of serving the needs of all or any portion of the River Club.

(q) Executive Board. The board of directors of the Association, as the same may be constituted from time to time in accordance with this Declaration, the Articles of Incorporation and the Bylaws.

(r) Exterior Improvements. All structures and appurtenances thereto of every type and kind, including but not limited to the exterior surfaces of the Units, paved parking areas for surface parking, driveways, fences, screening walls, retaining walls, stairs, decks, patios, landscaping, drainage, trash enclosures, entry gates, hedges, windbreaks, plantings, planted trees,

shrubs, poles, signs, exterior air conditioning fixtures or equipment. Certain Exterior Improvements are owned by the Association and certain Exterior Improvements are owned by the Owners but maintained by the Association.

(s) First Mortgage. A mortgage or deed of trust, or any other form of security instrument affecting title to a Unit which is subject only to governmental liens, the lien for real property taxes, and any other liens made senior to such First Mortgage by Colorado law.

(t) First Mortgagee. Any holder of a First Mortgage, including the Declarant. An "Institutional First Mortgagee" shall refer to any of the following: bank, insurance company, mortgage lender, real estate mortgage investment trust, pension fund, an agency of the United States Government (including "VA" or "FHA"), mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender holding a First Mortgage or any insurer or guarantor of a First Mortgage.

(u) Governing Documents. Collective reference to each of the following as the same may be amended, supplemented and restated from time to time.

(i) River Club Governing Documents. All documents which affect all property within the Association, i.e., this Declaration, the Articles, the Bylaws, Design Guidelines, and all Rules and Regulations, Policies and Procedures adopted, amended and repealed by the Executive Board. Each and every provision of the River Club Governing Documents shall be given the force and effect as if set forth in this Declaration; and

(ii) Master Association Governing Documents. Collective reference to the following which affect all property within the South Fork Ranches Master Homeowners Association, Inc. ("Master Association"):

(1) Master Declaration. The Master Declaration of Covenants, Conditions and Restrictions for South Fork Ranches Recorded on November 28, 2000 in Book 0493 at Page 732 (and all amendments thereof);

(2) Articles of Incorporation of the Master Association filed with the office of the Colorado Secretary of State;

(3) Bylaws for the Master Association; and

(4) Rules, Policies and Procedures, and Landscaping Requirements adopted by the Master Association executive Board from time to time.

If there is any inconsistency between the provisions of this Declaration and the provisions of any of the other River Club Governing Documents, the provisions of this Declaration shall govern and control. If there is any inconsistency between the provisions of this Declaration and the provisions of any of the other Master Association Governing Documents, the most restrictive provision shall control.

(v) Improvement. All structures and improvements located upon or made to a Unit and any appurtenances thereto of every type or kind, including, but not limited to, buildings, spas, patio covers, awnings, roofing, mail boxes, satellite dishes, additions, walkways, outdoor sculptures or artwork, children's playground equipment, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, windbreaks, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures, but excluding Landscaping. Structural Improvements shall mean the construction of any permanent structure or any change or modification to a structure constructed on a Unit as such improvements may be more specifically defined in the Design Guidelines. Nonstructural Improvements shall be all other improvements to a Unit as such improvements may be more specifically defined in the Design Guidelines. The term "Improvement" specifically includes Exterior Improvements.

(w) Landscape Requirements. Collectively the Master Association Landscape Requirements together with the Landscaping standards adopted by the Executive Board or the Design Review Committee to apply to River Club.

(x) Landscaping. All landscape improvements made within River Club. The Association shall be responsible for all Landscaping except as otherwise specifically provided in this Declaration. All Landscaping shall conform to the Landscaping Requirements.

(i) Common Element Landscaping. All landscape improvements made within the Common Elements, including without limitation irrigation and sprinkler systems, trees, hedges, plantings, shrubs, sod or grass, or landscape bark or rock which the Executive Board or the Design Review Committee determines are desirable or necessary to complement or enhance the neighborhood or character of River Club and any landscaping improvements made by the Association to any adjacent Master Association Common Areas.

(ii) Unit Landscaping. Unit Landscaping shall mean all landscape improvements made for any Unit including without limitation irrigation and sprinkler systems, trees, hedges, plantings, shrubs, sod or grass, landscape bark or rock and ornamental paths and walkways.

(y) Plat. That certain plat of "River Club at South Fork Ranches" according the Plat thereof filed January 18, 2005, under Reception No. 386250, in Map Drawer 11, Map No. 230-231, in the Office of the Clerk and Recorder, Rio Grande County, Colorado.

As amended by the following:

That certain plat of "River Club at South Fork Ranches -- Phase 1", according to the Plat thereof filed January 18, 2005, under Reception No. 386249, in Map Drawer 11, Map No. 229, in the Office of the Clerk and Recorder, Rio Grande County, Colorado

That certain plat of "River Club at South Fork Ranches -- Phase 2" according to the Plat thereof filed July 27, 2005, under Reception No. 388853, in Map Drawer 11, Map No. 247, in the Office of the Clerk and Recorder, Rio Grande County, Colorado.

That certain plat of "River Club at South Fork Ranches -- Phase 3" according to the Plat thereof filed May 10, 2006, under Reception No. 392602, in Map Drawer 11, Map No. 287, as amended by the Plat of River Club at South Fork Ranches, Phase 3 Amended, filed September 29, 2006, at Reception No. 394503, in Map Drawer 11, Map No. 298, in the Office of the Clerk and Recorder, Rio Grande County, Colorado

That certain plat of "River Club at South Fork Ranches -- Phase 4" according to the Plat thereof filed November 13, 2007, under Reception No. 399868, in Map Drawer 11, Map No. 316, in the Office of the Clerk and Recorder, Rio Grande County, Colorado

(z) Master Association. The South Fork Ranches Master Homeowners Association, Inc., a Colorado non-profit corporation.

(aa) Master Association Covenants. Collectively, all agreements, restrictions, reservations, conditions, terms, easements, and rights-of-way set forth or referenced in the Master Declaration or otherwise set forth in the Master Association Governing Documents, as the same may be adopted and amended from time to time.

(bb) Owner. Any person or entity who is the owner in fee simple of a Unit, but not a person or entity having an interest in a Unit solely as security for an obligation. Declarant is the original Owner of any Units created under this Declaration.

(cc) Related User. Any lessee, licensee, invitee, agent or other person occupying a Unit at the direction or invitation of an Owner.

(dd) Rules and Regulations. Collectively, all rules and regulations, policies, procedures and guidelines for both the Association and the Master Association, as any of said items may be adopted and amended from time to time pursuant to the applicable Governing documents. The Rules and Regulations for both the Association and the Master Association shall apply to the ownership and operation of River Club.

(ee) Special Assessments. Assessments imposed by the Association in accordance with Section 7.6 below. Special Assessments are treated and collected as Common Expense Assessments.

(ff) Turnover Date. As used in this Declaration, this term refers to the date of each of these occurrences:

(i) Termination of Declarant's Authority to Appoint a Majority of the Board. The earliest to occur of the following: (A) the date that is sixty (60) days after the date that seventy-five percent (75%) of the maximum number of Units that may be created have been conveyed to Unit Owners other than Declarant; or (B) the date that is two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or (C) the date that is two (2) years after any right to add new Units was last exercised.

(ii) Termination of Reserved Rights. As to all Development Rights, Special Declarant Rights, the right to appoint members of the Design Review Committee and all other rights reserved in the Original Declaration by the Declarant and restated in this Declaration (i.e., excluding only the right described in 1.5(ff)(i) above), the date that is the earliest to occur of the following: (A) ten years after the Original Declaration was recorded; or (B) the Declarant's sale of the last remaining Unit to a purchaser in the normal course of business. A Transferee Declarant would not be considered a "purchaser in the normal course of business."

(gg) Unit. Unit shall mean a physical portion of River Club which is designated for separate ownership or occupancy by an Owner, the boundaries of which are depicted upon the Plats and on the planned community Plat filed with this Declaration. The Units shall be subject to one or more party wall agreements with adjacent Units.

ARTICLE 2 GENERAL STATEMENT OF COVENANTS

2.1 **Covenants Bind River Club.** River Club shall be held, sold, and conveyed subject to the Declaration and the Master Association Declaration for the purpose of protecting the value and desirability of River Club and any other purposes incidental thereto, and the Declaration and Master Association Declaration shall run with the land and shall be binding on all parties having any right, title or interest in River Club or any part thereof from time to time, and shall inure to the benefit of each Owner thereof and each Owner's heirs, personal representatives, successors and assigns, and to the Association.

2.2 **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Elements, subject to the restrictions imposed in the Master Declaration, and the following rights of the Association.

- (a) Any restriction or limitations contained in the Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying Common Elements to the Association;
- (c) Any restrictions or limitations imposed by the County or the Districts, or any one of them, to the extent that the Common Area(s) in question are owned, operated and/or maintained by the County or such District(s);
- (d) The right of the Association to exercise all powers and duties pursuant to *ARTICLE 5* below and pursuant to any other applicable provisions of the Governing Documents;
- (e) The right of the Executive Board to adopt and amend, from time to time, Rules and Regulations concerning all or any portion of River Club and any Improvements located thereon, as the Association may determine is necessary or prudent;

(f) The right of the Association to enter into and execute contracts with any party for the purpose of providing management, maintenance or other services for the Common Elements, or otherwise governing their use and operation;

(g) The right of the Association to grant permits, licenses and easements over the Common Elements for utilities, roads, and other purposes deemed appropriate by the Executive Board;

(h) Subject to the Act, the right of the Association to dedicate or transfer all or any part of the Common Elements;

(i) The right of the Association to mortgage or otherwise encumber any or all of the real or personal property owned by it as security for money borrowed or debts incurred, subject to the approval requirements set forth below and in the Act; and

(j) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements to the same, or for such other purpose or purposes as the Association may deem appropriate.

2.3 **Authorized Users.** The Common Elements may be used and enjoyed by each Owner and Related Users and by residents of the River Club in accordance with the terms, conditions and restrictions contained herein and in the Declaration.

**ARTICLE 3
COMMON ELEMENTS**

3.1 **Description of Common Elements.** The Common Elements are shown as "Common Element Tracts" on the Plat, and may be further described thereon. The Limited Common Elements are shown as "LCE Tracts" on the Plat. Any declaration of annexation or amendment to this Declaration pursuant to which any additional property is made a part of River Club in accordance with ARTICLE 14 below shall identify the Common Elements to be located therein.

3.2 **Maintenance of Common Elements.** The Association shall be responsible for the maintenance, repair, replacement, operation, management and control of all Common Elements. The Association shall not be responsible for the maintenance, repair, replacement, operation, management or control of any real property for which the Master Association or one or more of the Districts provides such services. The Association may from time to time determine that the Master Association or the responsible District is not maintaining Master Association property in the condition contemplated by this Declaration or any of the Governing Documents, and in such event, the Association may undertake such maintenance, repair, replacement, operation or management to ensure that these Improvements meet the standards provided for in this Declaration, and in the Design Guidelines. The costs associated therewith shall be borne by the members of the Association as a Common Expense.

ARTICLE 4
OPERATION OF THE ASSOCIATION

Instrument Book Page
201000407513 OR 547 638

4.1 **Formation.** The Association has been formed as a Colorado non-profit corporation. The Association shall have the duties, powers and rights set forth in this Declaration, the Articles of Incorporation, the Bylaws and the other Governing Documents. The Association's affairs shall be managed by the Executive Board. Subject to the provisions of the Act, the Declarant shall have the right to appoint and to remove a majority of the members of the Executive Board until the Turnover Date defined in Section 1.5(ff)(i) above. Notwithstanding this right to appoint members to the Executive Board, (i) sixty (60) days after Declarant conveys twenty-five percent (25%) of the maximum number of Units that may be created to Owners other than Declarant, twenty-five percent (25%) of the members of the Executive Board (a minimum of one) shall be elected by the Owners other than the Declarant; and (ii) upon Declarant's conveyance of fifty percent (50%) of the maximum number of Units that may be created to Owners other than Declarant, thirty-three and one-third percent (33-1/3%) of the members of the Board shall be elected by the Unit Owners other than the Declarant.

4.2 **Executive Board.** The number, term and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation and Bylaws. The Executive Board may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, or to a manager or management company, provided, however, such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. Actions by or on behalf of the Association may be taken by the Executive Board or any duly authorized committee, officer, agent, employee or manager without a vote of the Owners, except as otherwise specifically provided in this Declaration.

4.3 **Membership in Association.** Each Owner shall automatically be a member of both the Association and the Master Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Unit, and the membership shall automatically pass with the fee simple title to the Unit. Declarant shall hold one membership in the Association for each Unit it owns. Membership in the Association shall not be assignable separate and apart from fee simple title to a Unit, except that an Owner may assign in a written, notarized document, some or all of the Owner's rights as an Owner and as a member of the Association to a Related User and may arrange for a Related User to perform some or all of such Owner's obligations as provided in this Declaration, provided, however, no such delegation or assignment shall relieve an Owner from the responsibility for performing his or her obligations under this Declaration. The rights acquired by any such Related User shall be extinguished automatically upon the termination of any lease or when the Owner ceases to hold title to a Unit, whichever is applicable. An assignment of rights by an Owner pursuant to this Section 4.3 shall not be subject to any present or future statutory time limit for the duration of proxy rights.

**ARTICLE 5
THE ASSOCIATION**

Instrument Book Page
201000407513 OR 547 639

5.1 **General Purposes and Powers.** The Association, acting through the Executive Board or any approved committee or subcommittee of the Association, and except as otherwise provided by this Declaration or the Governing Documents, shall perform such functions and manage River Club as provided in this Declaration so as to further the interests of the Owners. The Association shall have all power necessary or desirable to effectuate its responsibilities in accordance with this Section 5.1, and in doing so shall act in a manner consistent with the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such designation of rights, duties, and authority.

5.2 **Address of the Association.** The current address of the Association is set forth on the first page of this Declaration and may be changed in accordance with Section 17.6 below or at any time by recording in the real estate records of the County any written supplemental information to this Declaration for the purpose of providing notice of the Association's address.

5.3 **Powers and Duties.** The Association, acting in all instances by and through the Executive Board unless specifically reserved to its members, shall have the following specific powers and duties:

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101, et seq., as it is amended from time to time.

(b) The Association shall have all of the powers, authority and duties necessary and proper to manage the business affairs of River Club, subject to the terms, requirements and limitations contained in the Act and the Governing Documents.

(c) The Association shall have all of the powers, authority and duties necessary and proper to own, operate, manage, lease, encumber, maintain, repair, reconstruct, replace, improve, and otherwise deal with the Common Elements, including the right to acquire additional Common Elements and to construct Improvements thereon, and the right to promulgate reasonable Rules and Regulations which do not conflict with any of the provisions of this Declaration or the other Governing Documents. The Association may adopt standards for the management and maintenance of the Common Elements that are more restrictive than the standards contained in any of the Master Association Governing Documents, including without limitation the Master Declaration. Any additional costs associated with maintaining and operating the Common Elements to the standards established by the Association shall be assessed as part of the Common Expenses for the Association.

(d) The Association shall have all of the powers, authority and duties necessary and proper to operate, manage, maintain, repair, reconstruct, replace, improve, and otherwise deal with Unit Landscaping and the specific Unit maintenance which the Association has assumed responsibility under this Declaration, and the right to promulgate reasonable Rules

and Regulations related to the Units which do not conflict with any of the provisions of this Declaration or the other Governing Documents.

(e) The Association shall have the right to have access to the Common Elements and, to the extent necessary, to any adjacent Units to the extent necessary for the maintenance, repair or replacement of, or to prevent damage to, the Common Elements and Units.

(f) Subject to the limitations contained in the Act, the Association may undertake any activity, function or service for the benefit of, or to further the interests of, the Owners.

(g) The Association may engage any contractor approved by the Executive Board to perform the Association's duties hereunder, or a community association manager as more particularly provided in the Bylaws.

(h) The Association may assign its future income, including its rights to receive Common Expense Assessments, upon the affirmative vote of a majority of the voting interests present at a meeting called for that purpose, in accordance with the Bylaws.

(i) The Association shall enforce the requirements of the Design Guidelines and the Rules and Regulations as it deems necessary to ensure the proper use, development, improvement, repair, maintenance and replacement of real and personal property within River Club, and, subject to the provisions of ARTICLE 8 below, to appoint persons to serve on the Design Review Committee.

5.4 Enforcement. The Association shall have the power to enforce the provisions and requirements of the Governing Documents and to report to the Master Association Executive Board or other appropriate entity any violation of the Master Declaration and/or the Master Association Governing Documents. The Association shall take such action as the Executive Board deems desirable to cause each Owner and each Related User to comply with the Governing Documents and the Master Association Governing Documents by any of the following means:

(a) By entry upon any Unit after notice and an opportunity to be heard (unless a bona fide emergency exists), without liability to the Owner thereof, for the purpose of inspection, enforcement or causing compliance, including by curing any such violation;

(b) Subject to Section 5.10 below, by commencing and maintaining actions and suits: (i) to recover damages; or (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, the provisions of the Association and Master Association Governing Documents by mandatory injunction or otherwise;

(c) By exclusion of any Owner or Related User from use of any Common Elements for a period of sixty (60) days following any violation, or so long as the violation continues, whichever is longer;

(d) By suspension of the voting rights of an Owner for up to thirty (30) days following any violation, or so long as the violation continues, whichever is longer;

(e) By suspension of the services the Association provides to any Owner to operate, manage, maintain, repair, reconstruct, replace, improve, and otherwise deal with Unit Landscaping, or Unit specific maintenance expressly assumed by the Association pursuant to the Governing Documents.

(f) By levying and collecting, after notice and an opportunity to be heard, fines against any Owner for violation by such Owner or a Related User, as a Default Assessment to be secured by a continuing lien from the date it is levied, and by foreclosure of such lien. Any Default Assessment imposed as a fine shall be based on uniform guidelines adopted by the Association in advance of such assessment, and applied uniformly.

5.5 Association Agreements. The Association shall have the power to execute any agreement for professional maintenance or management of all or any portion of River Club, or any contract with the Declarant to provide such services. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee or a penalty upon not more than thirty (30) days written notice.

5.6 Indemnification. To the full extent permitted by law, all of the officers and members of the Executive Board and any other validly-formed committee members of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be parties, or in which they may become involved, by reason of being or having been an officer or member of the Executive Board or committee of the Association, or any settlements thereof, whether or not they are officers or members of the Executive Board or committee members of the Association at the time such expenses are incurred. Such indemnification shall not apply, however, to any officer or Executive Board or committee member that is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties in connection with the particular case or controversy. In the case of a settlement, the foregoing indemnification shall apply only if the Executive Board approves the settlement and reimbursement as being in the best interests of the Association.

5.7 Governmental Interests. Declarant has reserved the right to designate portions of River Club for fire, police, water, drainage, utility facilities, parks, and other public facilities, as provided below and subject to the provisions of the Act. These sites may 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 of the site if so directed by Declarant. The sites may include other property not owned by the Declarant, provided the owner consents thereto.

5.8 Right to Notice and Comment. Before the Executive Board amends the Bylaws, or whenever the Governing Documents require that an action be taken after "notice and comment," and at any other time the Executive Board determines, the Owner or Owners affected

by the action in question shall have the right to receive written notice of the proposed action and the right to comment orally or in writing. Notice shall be given to each affected Owner in writing, delivered either personally or by mail to their respective addresses as they appear in the records of the Association, and additional notice may be provided in a newsletter or similar publication which is routinely circulated to all Owners. Any required notice shall be given not less than three days before the proposed action is to be taken. The Notice shall invite comment to the Executive Board, orally or in writing, before the scheduled time of any meeting.

5.9 Disclaimer Regarding Security. The Association may, but shall not be obligated to, maintain or support certain activities within River Club that are designed to make occupancy of River Club more secure than it otherwise might be. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within River Club, nor shall any of them be held liable for any loss or damage by reason of failure to provide security or by reason of the ineffectiveness of any security measures that might be undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in any case prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform all Related Users of the terms of this Section 5.9. Further, each Owner and Related User, and every other Person entering upon River Club, expressly agrees that he, she or it assumes all risks of loss or damage to persons and to property resulting from the acts or omissions of third parties.

5.10 Compliance with Declaration

(a) Each Owner shall comply strictly with, and shall cause each of such Owner's Related Users to comply strictly with, all of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and the other Governing Documents of the Association and the Master Association. Failure to comply with any of the same shall be grounds for an action or actions to recover sums due, for damages and/or for injunctive, relief, along with costs of suit and reasonable attorneys' fees, maintainable by the Executive Board in the name of the Association on behalf of the Owners, or, if authorized in advance by the Executive Board as described below, by an aggrieved Owner.

(b) In all instances of noncompliance any action against an Owner for failure to comply with the Governing Documents shall be initiated by the Association through the Executive Board.

(c) Any failure to comply with the terms of this Declaration or the Governing Documents may result in the imposition of a Default Assessment.

(d) Except as expressly provided below, in no event may the Association or the Executive Board commence an action or proceeding against an Owner seeking equitable relief, or seeking damages in excess of \$25,000.00, unless the following conditions are satisfied:

(i) The decision to commence such action or proceeding shall be taken at an annual or special meeting of the Association;

(ii) A budget for such litigation, including all fees and costs and assuming trial and applicable appeals, shall have been prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all Owners and posted at the principal office of the Association at least ten (10) days prior to such meeting;

(iii) At such meeting the Owners representing an aggregate of sixty-seven percent (67%) or more of the voting interests of the Units then included within River Club shall approve the decision to commence, and the proposed budget for such action or proceeding (the "Approved Litigation Budget"), and shall concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the Approved Litigation Budget; and

(iv) The Association shall only be authorized to expend funds for such proceeding in excess of the amount contemplated by the Approved Litigation Budget after an amended budget has been approved in accordance with the procedures specified in this Section 5.10(d)

(e) All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with Section 5.10(d) shall be funded by means of a Special Assessment, and in no event may the Association use reserve funds or incur any indebtedness in order to pay any costs and expenses incurred for such purpose.

(f) If the Association commences any action or proceeding against a particular Owner or particular Owners requiring the approval of the Owners in accordance with Section 5.10(d), the Owner or Owners who are being sued shall be not be exempted from the obligation to pay the Special Assessment levied for the purpose of paying the costs and expenses of such action or proceeding. However, pursuant to the Act, if such Owner is the prevailing party and is awarded its attorneys fees and costs, such Owner's allocated share of such Common Expense previously collected shall be reimbursed to the Owner.

(g) The requirements set forth in Section 5.10(d) through Section 5.10(f) hereinabove shall not apply to any action or proceeding to collect or otherwise enforce Assessments and any related fines, late charges, penalties, interest or costs and expenses, including reasonable attorneys' fees, nor shall said provisions apply to any action to enforce any decision or requirements of the Design Review Committee, including an action for emergency injunctive relief. The cost of any such action shall be assessed against the offending Owner as a Default Assessment.

**ARTICLE 6
UNIT MAINTENANCE RESPONSIBILITIES**

Instrument Book Page
201000407513 OR 547 644

6.1 Owner's Responsibility.

(a) Structural Maintenance. Each Owner shall be responsible for maintaining all Structural Improvements constructed on his or her Unit, including, without limitation, all buildings (including the structural elements of the exterior façade thereof), spas, patio covers, awnings, roofing, satellite dishes, garages, stairs, decks and fixtures. The Structural Improvements shall be maintained in accordance with the Design Guidelines and the Standards of Performance set forth in Section 6.3 below.

(b) Owner Installed Landscaping. Subject to Design Review Committee approval, any Owner may design, install and maintain such additional Landscaping within the boundaries of the Owner's Unit as may be deemed appropriate by the Design Review Committee. Any Landscaping exceeding the Landscaping to be installed and maintained by the Association shall be installed and maintained by the Owner at the Owner's sole cost and expense, or at the option of the Executive Board, shall be installed and/or maintained by the Association with the cost thereof paid by the Owner of the benefited Unit as a supplemental Common Expense Assessment against the Owner's Unit. Any Owner installed and maintained Landscaping shall meet or exceed the standards set forth in the Landscaping Requirements. Prior to installation of any Owner-installed Landscaping, the Owner shall provide the Design Review Committee with a full set of plans, describing in detail the proposed Owner installed landscaping (the "Landscaping Detail"). The Design Review Committee shall review the Landscaping Detail and advise the Owner of its acceptability within thirty (30) days of receipt of the complete Landscaping Detail. A Landscaping Detail submittal shall be deemed approved unless the Design Review Committee notifies the Applicant of disapproval or provides the Applicant with a request for additional information or materials within thirty (30) days after the date that the Design Review Committee received the complete Landscaping Detail. The Design Review Committee's review and approval of a Landscaping Detail shall be in addition to, and not in lieu of the Master Association's review and approval of same.

6.2 Association Responsibility. The Association shall be responsible for the installation and maintenance of the Unit Landscaping. The Association may delegate the responsibility for design, installation and maintenance of the Landscaping improvements to the Declarant or to the Design Review Committee.

(a) Landscaping. The Association shall design, install and maintain Landscaping for each Unit located within River Club. The Landscaping shall be designed, installed and maintained in accordance with the Landscaping Requirements and Design Guidelines to include some or all of the following:

(i) Designing, constructing and installing an overall Landscape plan for each Unit;

Instrument
201000407513 OR Book Page
547 645

- (ii) Irrigating, seeding or sodding of lawn areas within each Unit;
- (iii) Designing and installing flower beds, if appropriate, within each Unit;
- (iv) Installing shrubs and trees within each Unit;
- (v) *Maintaining and replacing, as necessary, landscaping materials, including trees, shrubs and flower beds (if applicable) within each Unit;*
- (vi) Maintaining, winterizing, repairing and replacing, as necessary, the irrigation and sprinkler system serving each Unit; and
- (vii) Repairing or replacing any damage to Landscaping, subject to each Owner's obligation to separately pay for any Landscaping damage caused by the negligent or willful conduct of such Owner or Owner's Related User.

(b) General Unit Improvements and Maintenance. The Association shall be responsible for the design, installation and maintenance of certain additional Nonstructural Improvements which shall be further defined in the Design Review Guidelines, which may, at the Association's discretion, include some or all of the following:

- (i) Constructing, installing and maintaining any approved fencing including any fencing located in or across any Unit or at the boundary between any Units;
- (ii) Removing snow from the Common Elements, Motor Court and Units and from any other real property within River Club to the extent snow removal services are not provided by the County, the Master Association, or one of the Districts (but the Association shall have no responsibility for removing snow from within Limited Common Element areas assigned to any Unit;
- (iii) Clean-up and removal of trees, branches or other debris deposited as a result of a storm; and
- (iv) Periodic clean up and removal of leaves and debris on a seasonal basis.

(c) Maintenance of Exterior Improvements. The Association shall maintain, from time to time as the Association may reasonably determine, all non-structural exterior Improvements, including the repainting and resurfacing of exterior surfaces of structures, including roofing materials, gutters, downspouts, drainspouts, exterior siding or stucco finish, trim around doors and windows, surfaces of garage doors, external vents and flues and glass surfaces.

6.3 **Standard of Performance.** Except as otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for

maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the quality standards from time to time existing within River Club, and the Governing Documents enacted for both Associations. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of property which it does not own, except to the extent that the Owner or the Owner's Related Users have been negligent in the performance of their maintenance responsibilities.

ARTICLE 7 COVENANT FOR COMMON EXPENSE ASSESSMENT

7.1 Creation of Association Lien and Personal Obligation To Pay Common Expense Assessments. Declarant and each Owner of a Unit, by acceptance of a deed or other document conveying an interest in a Unit, shall be deemed to have covenanted and agreed to pay to the Association the Common Expense Assessments, including without limitation Special Assessments, assessments for reserves and the Default Assessments as may be imposed by the Association pursuant to the Governing Documents, irrespective of whether such covenant shall have been set forth in any such deed or other conveyance. Such Assessments, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Association, shall be the personal obligation of the Owner of the Unit at the time when the Assessment or other charges become due. The Common Expense Assessments and Default Assessments imposed by the Association, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon such Unit against which each such Assessment or charge is made. The personal obligation to pay any past due sums shall pass to a successor in title (other than a First Mortgagee acquiring a Unit as a result of foreclosure or proceedings in lieu of foreclosure), unless otherwise expressly agreed by the Association. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets from or reduction of such Assessments shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

7.2 Apportionment of Common Expenses. All Common Expense Assessments shall be assessed against all Units in accordance with the allocated interest formula set forth in ARTICLE 16, except as provided below and elsewhere in this Declaration:

(a) Any common expense incurred for the benefit of fewer than all of the Units shall be assessed exclusively against the benefited Units as a supplemental Common Expense Assessment, to the extent such services are not included as part of the service package provided by the Association under this Declaration;

(b) If any costs or expenses are incurred by the Association due to the misconduct of an Owner or an Owner's Related Users, the Association may assess that expense exclusively against the Owner and that Unit as a Default Assessment; and

(c) Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against an Owner are enforceable as Default Assessments against the Unit of such Owner.

7.3 Purpose of Assessments. All Common Expense Assessments shall be used for the purposes of promoting the health, safety, and welfare of the Owners, and in particular for the following purposes:

(a) To provide the services necessary to maintain River Club in the superior condition contemplated in this Declaration and the Governing Documents;

(b) To enforce the provisions of the Governing Documents;

(c) To exercise all rights and powers and to discharge all duties and obligations pursuant to the Governing Documents; and

(d) To fund any operating deficits or reserves the Association deems necessary to meet its financial obligations.

7.4 Annual Assessment/Commencement of Common Expense Assessments.

(a) The Common Expense Assessment shall be made on an annual basis against all Units and shall be payable as determined by the Executive Board. The Common Expense Assessment shall be based upon the Association's advance budget of the cash requirements estimated by the Association to be required to provide for the administration and performance of its duties during the Assessment year in question. A summary of the budget shall be submitted by ordinary first-class mail to the Owners within thirty (30) days after its adoption by the Executive Board along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the budget summary to the owners. The Executive Board, in its discretion, may mail the budget summary together with a written ballot and information sufficient for the Owner to vote for or against the adoption of the proposed budget. Unless at that meeting, or by written ballot, Members entitled to cast eighty percent of the Members of the Association reject the budget, the budget is ratified. Common Expense Assessments shall be due and payable on a monthly basis, due on the first (1st) day of each month and delinquent after the fifth (5th) day of each month, or in such other manner as may be determined by the Executive Board. The Common Expense Assessments will begin on the first (1st) day of the calendar month following the calendar month in which the conveyance of the first Unit to a person other than Declarant occurs, or at such later date as Declarant determines. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the same when and as assessed.

(b) In addition, the Declarant or the Association shall require the first Owner of each Unit other than the Declarant to make at the time of purchase, a non-refundable contribution to the Association in an amount equal to one-fourth (1/4) of the Annual Assessment in effect or Annual Assessment proposed for the Unit at the time of Closing to establish a fund of

working capital to defray the initial costs to establish the community in the condition contemplated by this Declaration (the "Working Capital Fund"). Upon termination of Declarant control of the Association the Declarant shall transfer control of such funds to the Association, if not sooner transferred. Payments made to the Working Capital Fund shall not be considered advance payments of regular Assessments. Funds in the Working Capital Fund shall be segregated and separately accounted for the use and benefit of the Association at the Board's discretion. Upon transfer of the Unit, the Owner (including the Declarant if a contribution to the Working Capital Fund has been made) shall be entitled to a credit from his transferee for the unused portion of the contribution to the Working Capital Fund. The Declarant shall not use any of the Working Capital Fund to defray its expenses, reserve contributions, or construction costs or to make up for any budget deficits.

7.5 Lien Priority. The lien of the Association under this Section shall be prior to all other liens and encumbrances on a Unit except: (a) the lien for the Master Association and other liens and encumbrances recorded before the recordation of the Original Declaration (b) a First Mortgage on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (c) liens for real estate taxes and other governmental assessments or charges against the Unit by the State of Colorado, the County, or any political subdivision of any such governmental authority. This Section does not affect the priority of mechanics or materialmen's liens. The lien of the Association under this Article is not subject to the provisions of any homestead exemption allowed by state or federal law, and all such homestead exemptions shall be deemed waived by an Owner upon such Owner's acceptance of a deed or other conveyance of fee title to such Owner's Unit. Sale or transfer of any Unit shall not affect the lien for said Assessments, except that the transfer of any Unit as a result of the foreclosure of any First Mortgage, or any proceeding in lieu thereof, shall extinguish the Assessment lien as to any amounts that were due and payable prior to the effective date of transfer resulting from such foreclosure or deed in lieu thereof. No transfer resulting from any such foreclosure or proceeding in lieu thereof, however, will relieve the prior Owner from personal liability therefore, or relieve the Unit from continuing liability for any Assessments thereafter becoming due, nor from the lien thereof.

7.6 Special Assessments. The Executive Board may at any time and from time to time, determine, levy and assess a Special Assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of a capital improvement and any fixtures or personal property related thereto, any acquisition of real property, and to fund, on an interim basis, any expenses incurred in pursuit of the actions described in Sections 5.10 and 7.7 below. Any such Special Assessment shall be due and payable as determined by the Executive Board. The term "capital improvements" as used herein shall mean the acquisition, improvement, development, maintenance, repair or replacement of Common Elements, or the improvement, development, maintenance or repair of the Landscaping of any Unit determined by the Executive Board, upon the advise of the Design Review Committee, as necessary to maintain the superior condition of River Club. If the improvement, development, maintenance or repair for any Unit benefits less than all of the Unit Owners, the Executive Board may assess the Special Assessment against the

Unit or Units the Executive Board determines received the benefit of the capital improvement expenditure. Notice in writing setting forth the amount of such Special Assessment allocable to any particular Unit and the due date for payment thereof shall be given to the Owner(s) of the affected Unit(s) not less than thirty (30) days prior to such due date.

7.7 Effect of Non-Payment of Assessments. Any Assessment provided for in this Declaration, or any installment thereof, which is not fully paid within five (5) days after the due date thereof, shall bear interest from the due date at the rate of eighteen (18%) per annum or at such lesser rate as may be set by the Executive Board from time to time, and the Association may assess a monthly late charge thereon as determined by the Executive Board. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Executive Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, or monthly or other installments thereof, and the Association may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, or any monthly or other installment thereof, and for any Default Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefore. The Association's costs of suit, expenses and reasonable attorneys' fees incurred by virtue of the failure of an Owner to timely pay Assessments when due, including attorneys' fees and costs for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding, and shall be recoverable by the Association as a Default Assessment from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage and convey or otherwise deal with the same. If the Association files a foreclosure action to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Executive Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit, subject to the rights of any prior lien claimant, without prior notice to the Unit Owner. The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit which accrued prior to the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

7.8 No Waiver or Abandonment. No Owner may be exempt from liability for payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made.

7.9 Declaration is Notice. Subject to the requirements contained in the Act, recording of this Declaration constitutes record notice and perfection of the Assessment lien. No

further recordation is required. The Executive Board, at its discretion, may prepare and record in the County's real property records, a written notice setting forth the amount of any unpaid indebtedness, the name of the Owner, a description of the Unit, and such other information, if any, as the Association may deem appropriate.

7.10 Real Property Taxes/Utility Charges. In addition to the Assessments described above, each Owner shall be obligated to pay real property taxes and special assessments imposed by Colorado governmental subdivisions against his or her Unit(s), as well as all charges for separately metered utilities servicing the Unit. Any utility charges which are not separately metered to an individual Unit by the applicable utility company may be collected by the Association as part of the annual Assessments; however, the charges for such utilities shall be allocated among the Units based on actual usage, as such is measured or determined by the Executive Board.

ARTICLE 8 DESIGN REVIEW

8.1 General. All Improvements to a Unit shall be made in compliance with the architectural review procedures and restrictions set forth in the Master Declaration the Master Association Design Guidelines, and the Association's Design Guidelines. Improvements requiring review (and approval) by the Association and the Master Association shall include, without limitation:

(a) The construction, installation, alteration, demolition in whole or in part, or expansion of any building, structure or other Improvements, including utilities;

(b) The staking, clearing, grading, excavation, filling or similar disturbance to the surface of the land, including without limitation any change of grade, change of ground level, change of drainage pattern, or change of stream bed or course;

(c) All initial planting of and subsequent material modifications to Landscaping, and all planting, clearing or removing of trees, shrubs, grass or perennial plants, but in each instance excluding removal of dead or diseased plants and trees and excluding any replacement that is substantially similar to the item being replaced;

(d) Any change or alteration to the exterior appearance of Improvements previously approved by the Master Association Design Review Committee or the Design Review Committee, including any change in finish material, color or texture; and

(e) Reconstruction of any Improvements.

8.2 Interior Unit Changes. Approval of the Design Review Committee shall not be required for any changes to the interior of any residence constructed on a Unit; provided, however, that no Unit owner shall modify any interior wall that constitutes a party wall with any other Unit.

8.3 **Modification after Occupancy.** Any Improvements proposed for construction after the issuance of a final Certificate of Occupancy for a Unit shall be subject to review and approval by the Design Review Committee.

8.4 **Design Review Responsibility.** The administration of the Design Guidelines and the review of all applications for approval of modifications under this Article and the Design Guidelines shall be the responsibility of the Design Review Committee. The Executive Board may establish and charge fees for review of applications hereunder, and may require such fees to be paid in full prior to review. Additionally, the Executive Board may provide for the employment of such professional consultants as it may deem appropriate to advise and assist the Design Review Committee. The Executive Board may also establish fines and other penalties for failure to comply with the provisions of this Article and the Design Guidelines.

8.5 **Design Review Committee.** The Design Review Committee shall consist of three (3) persons. Until the Turnover Date set forth in Section 1.5(ff)(i) above, or such earlier date as Declarant may elect in writing to relinquish such power, Declarant shall appoint all members of the Design Review Committee, and may remove and replace any such members as it deems appropriate. After expiration or termination of Declarant's appointment rights, the Design Review Committee shall be comprised of Owners; to the extent practicable, shall take into account any special skill, education or qualifications, including engineering, architectural or design experience; and shall then be appointed by the Executive Board as a committee of the Board. One or more members of the Executive Board may also serve on the Design Review Committee. Until such Turnover Date, Declarant, in its sole discretion, may at any time grant all or any portion of its power to appoint the members of the Design Review Committee to any Transferee Declarant, or to the Association.

8.6 **Guidelines and Procedures General.** Declarant shall prepare the initial Design Guidelines. After the Declarant's right to appoint the members of the Design Review Committee terminate, the content of the Design Guidelines shall be the responsibility of the Executive Board. For so long as Declarant owns any Units, any amendment shall require the written approval of Declarant. Any amendments to the Design Guidelines shall apply to modifications commenced after the date of such amendment only and shall not apply to require modifications to, or removal of, structures previously approved once the approved construction or modification has commenced. The Design Guidelines may contain general provisions applicable to all of River Club, as well as specific provisions which vary from one portion of River Club to another depending upon location, unique characteristics, and intended use. The Design Guidelines may also include the procedures, materials to be submitted and additional factors that will be taken into consideration in connection with the approval of any proposed Improvement. The Design Guidelines may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part, and may waive the requirement or exempt Improvements from the requirement for approval if such approval is not reasonably required to carry out the purposes of this Declaration. The Design Guidelines, as the same shall be amended from time to time, need not be recorded, but shall be considered incorporated herein by reference and shall be enforceable as though set forth in full. The Owners agree and understand that in addition to the Design Guidelines, the construction and

modification of Improvements within River Club shall be subject to and governed by the requirements set forth in the Master Association Design Guidelines. Each Owner, by accepting to deed for any Unit, shall be deemed to have agreed to comply with the requirements of the Master Association Design Standards, as the same may be interpreted and enforced by the Master Associations' respective Design Review Committees.

8.7 Submission of Application. Prior to the commencement of work described in Section 8.1, the Person proposing to make such Improvement shall submit to the Design Review Committee such information, descriptions, surveys, elevations, plans, specifications and samples showing and describing the proposed alteration as may be required by the Design Guidelines ("Application"). The Design Review Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Application. Until receipt by the Design Review Committee of all required materials in connection with the proposed modification, the Application shall be deemed incomplete, and the Design Review Committee may postpone review of any materials submitted for approval by the Applicant. At its request, the Applicant shall be entitled to receive a receipt from the Design Review Committee or its authorized agent showing the date the complete Application was received. Review and approval of the Design Review Committee shall be in addition to, and not in lieu of, review and approval by the Master Association Design Review Committee.

8.8 Criteria for Approval. The Design Review Committee will approve any proposed Improvement only if it determines that the Improvement in the location indicated will not be detrimental to the appearance of the surrounding areas of River Club as a whole; that the appearance of the proposed Improvement will be in harmony with the surrounding areas of the River Club; that the Improvement will not detract from the beauty, wholesomeness and attractiveness of River Club or the enjoyment thereof by the Owners, and that the upkeep and maintenance of the proposed Improvement will not impose any undue burden on the Association. The Design Review Committee may condition its approval of any Application upon such changes as the Design Review Committee may require. Upon approval of the Application, the Applicant shall submit the Application to the Master Association Design Review Committee for final approval in accordance with the terms of the Master Declaration.

8.9 Decision of Committee. The decision of the Design Review Committee shall be made within forty five (45) days after the date that it determines the Application is complete and any additional materials it may have requested have been furnished by the Applicant, unless such period of time is extended by mutual agreement of the Design Review Committee and the Applicant. The decision shall be in writing and, if the decision is to disapprove the Application, the reasons shall be stated. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee. The approval of the Design Review Committee shall not constitute approval by the Master Association Design Review Committee, both of which approvals are a condition precedent to the commencement of any construction, nor shall such approval relieve the responsibility of any Owner from obtaining all necessary building permits or other governmental approvals.

8.10 **Failure to Act.** Any request for approval of an Application shall be deemed approved within forty five (45) days after the date that the Design Review Committee receives the complete Application (including any additional materials required by it). The failure of the Design Review Committee to act on an Application shall not relieve the Applicant of its obligation to obtain Master Association Design Review Committee approval or any other required governmental approval of the proposed Improvement.

8.11 **No Waiver of Future Approvals.** Approval of proposals, plans and specifications, or drawings for any Application, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

8.12 **Prosecution of Work.** After approval of any Application, the proposed alterations shall be constructed with reasonable promptness and diligence in conformity with the Application and any conditions imposed by the Design Review Committee or the Master Design Review Committee in their approval.

8.13 **Notice of Completion.** Upon Completion of the Improvement, the Applicant shall give written notice of completion to the Design Review Committee. Until the date of its receipt of such notice, the Design Review Committee shall not be deemed to have received notice that the modification has been completed.

8.14 **Inspection.** The Design Review Committee or its representative shall have the right to inspect any work conducted in accordance with an approved Application prior to or after completion. If, as a result of its inspections or otherwise, the Design Review Committee determines that any Improvement has been commenced without obtaining the approval of the Design Review Committee, or if it determines that the work is not being completed or has not been completed in conformity with the Application and any conditions of approval, the Design Review Committee shall notify the Applicant in writing of such determination. The notice shall specify the particulars of the noncompliance, and shall require the Applicant to take such action as may be necessary to remedy the noncompliance and may, at the election of the Executive Board, be recorded in the County's real property records. The Master Association shall have the rights of inspection and final acceptance of the modification as set forth in the Governing Documents.

8.15 **Enforcement.** Any modification placed, installed or constructed, in violation of this Article shall be deemed to be nonconforming. Upon written request from the Design Review Committee, the Owner in violation shall, at his or her own cost and expense, remove the modification and restore the Unit in question to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as requested, Declarant and the Association, and their respective designees, shall have the right to remove the violation and restore the Unit to substantially the same condition as previously existed, or to pursue all legal and equitable remedies available to enforce the provisions of this Article. All costs and attorneys' fees, together with interest on all sums expended by the Association at such rate as

may be charged by it, may be assessed against such Unit as a Default Assessment and collected as a Common Expense Assessment against the Owner of such Unit. Additionally, any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Association from performing any future work within River Club upon notice and an opportunity to be heard.

8.16 Liability of Design Review Committee and Executive Board Members. Neither the Design Review Committee, the Executive Board nor any member thereof nor Declarant shall be liable to the Association or to any Owner or other Person for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Committee's or Executive Board's respective duties under this Declaration or the other Governing Documents unless arising as a result of an act or omission which is committed in subjective bad faith or which involves intentional misconduct or a knowing violation of law (as defined in C.R.S. § 7-120-102) by the Design Review Committee or Executive Board or individual members thereof. The Design Review Committee or Executive Board shall not be responsible for reviewing, nor shall its approval of any Plans and Specifications be deemed approval of, structural safety, engineering soundness, or conformance with building codes or any other laws, requirements or standards.

8.17 Variances. Until the Declarant's right to appoint its members terminates, the Design Review Committee may authorize variances from compliance with any of the Design Guidelines when circumstances so warrant. Such variances must be evidenced in writing and must be signed by at least a majority of the members of the Design Review Committee. After termination of Declarant's right to appoint members, only the Executive Board may grant a variance. If a variance is granted, no violation of this Declaration or the other Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted, provided the Applicant complies with the terms of the variance. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and particular provision in the instance covered by the variance.

8.18 Scope of Judicial Review. The scope of judicial review of any action taken by the Association or the Design Review Committee pursuant to this ARTICLE 8, including but not limited to the promulgation, interpretation, and enforcement of the Design Guidelines, shall be limited to cases of fraud, willful misconduct or subjective bad faith.

ARTICLE 9 RESTRICTIVE COVENANTS

9.1 Owners' Acknowledgment. All Owners and Related Users of Units are given notice that use of their Units is limited by provisions of the Governing Documents, including without limitation the Master Declaration and this Declaration, as they may be amended from time to time. Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that the use, enjoyment and marketability of his or her Unit may be

affected by such provisions, and that the covenants, conditions and restrictions affecting the use and occupancy of a Unit may be amended from time to time in accordance with the terms of this Declaration and the other Governing Documents. Every Restrictive Covenant defined in relevant provisions of the Master Association shall apply to the Association.

9.2 **Right of Owners.** The Executive Board shall not adopt any Rule or Regulation in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners to display "For Sale" signs and political signs and symbols in or on their Units of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and Related Users.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Activities Within Dwelling. No rule shall interfere with the activities carried on within the confines of dwellings on the Units, 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 may pose a threat to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units, or that create an unreasonable source of annoyance.

(e) Reasonable Rights To Develop. No rule or action by the Association or Executive Board shall unreasonably impede the Declarant's right to develop the Units owned by it in accordance with this Declaration and the Plat accompanying this Declaration and all Plats related to River Club.

9.3 **Prohibited Activities.** The following activities are prohibited within South Fork Ranches unless expressly authorized and if authorized, subject to such conditions as may be imposed by the Executive Board:

(a) Subdivision. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit, shall be prohibited without the prior written consent of Declarant prior to the Turnover Date set forth in Section 1.5(ff)(ii), and without the prior written consent of the Board after such Turnover Date;

(b) Commercial Activities. Any business, profession, trade, or similar activity shall be prohibited, except that an Owner may conduct business activities within a Unit so long as:

(i) The existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit;

(ii) The activity conforms to all zoning and other legal requirements for the activity that are applicable to the Unit in question; and

(iii) The activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Owners or Related Users.

(c) Non-Offensive. The activity is consistent with the residential character of River Club and does not constitute a nuisance, hazardous or offensive use, or threaten the security or safety of other Owners or Related Users, as may be determined in the reasonable discretion of the Executive Board.

(d) Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, including short term or vacation rentals to third parties unrelated to Owner. To the extent permitted under applicable law, Owners shall have the right to lease their Units only under the following conditions:

(i) All leases between Owners and/or all rental agreements and management agreements for the rental of Units shall be in writing;

(ii) All leases shall provide that the terms of the lease and the tenant's occupancy of the Unit shall be subject in all respects to the provisions of the Governing Documents, as the same may be amended from time to time, and shall provide that any failure by such tenant to comply with the provisions of these instruments, in any respect, shall be a default under the lease, said default to be enforceable by either the Association or the Owner/landlord, or both.

(iii) The Association may require that each Owner that desires to rent, lease or license its Unit retain a property management service to rent, lease or license a Unit on behalf of such Owner; provided, however, such property management service shall be on the Association's approved list of such service providers or otherwise approved by the Executive Board upon an Owner's request.

(e) Nuisances. Any use, activity, or practice that is the source of or unreasonably interferes with the peaceful enjoyment or possession of a Unit or any portion of the Common Elements or any portion of the River Club community shall be prohibited. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over River Club or any portion thereof shall be observed and may be enforced by the Association as if the same were contained in the Governing Documents. In no event shall the activities of the Declarant

which are reasonably necessary to the exercise of the rights granted to them by this Declaration or under applicable laws be considered a "nuisance" unless such activities unreasonably interfere with any Owner's use and enjoyment of such Owner's Unit.

(f) Vehicles. Parking, storing, servicing or repairing of commercial vehicles, recreational vehicles, mobile homes, boats, campers, trailers, watercraft, or other oversized vehicles, or any inoperative vehicles, shall be permitted only if the vehicle is completely enclosed within a garage.

(g) Animals.

(i) No Commercial Breeding. In no event may any Owner engage in the commercial breeding of animals on any portion of River Club, and in no event shall any Owner keep any animals other than common household pets within River Club.

(ii) Pet Supervision. No household pet or animal shall be allowed in or about River Club, including the Common Elements, at any time without adequate supervision and control by an Owner or Related User. Owners will be held responsible for any litter, waste, mess or damage created by their pets and for any offensive or prolonged noises created by their pets. Owners may not permit any animals to remain in or on any exterior portion of a Unit overnight or for any other extended period of time.

(iii) Pet Limitations. No Owner or Related User may allow more than three (3) dogs or cats, collectively, to occupy a Unit without the advance consent of the Executive Board. No animal that exceeds twenty-five pounds shall be allowed to occupy a Unit within River Club without the advance consent of the Executive Board.

(iv) Rules and Regulations. The Association shall adopt such additional Rules and Regulations regarding domestic pets designed to minimize damage and disturbance to other Owners and occupants as the Association deems appropriate to maintain the superior standards of River Club, including Rules and Regulations requiring damage deposits, waste removal, leash controls and noise controls.

(h) Vegetation. Owners may not engage in any activities that materially disturb or destroy the vegetation, wildlife or air quality within the River Club community, or which use excessive amounts of water, or which result in unreasonable levels of sound or light. An Owner may remove or replace dead or diseased vegetation on his or her Unit, however, an Owner may only modify the Landscaping of his or her Unit with the advance approval of the Design Review Committee obtained in accordance with the Design Review Standards.

(i) Grade. No Owner may obstruct or rechannel drainage flows, or alter the location or installation of drainage swales, storm sewers or storm drains. Declarant and the Association, however, may engage in any of the activities described in this subsection if such activities do not materially diminish the value of, or unreasonably interfere with, the use and enjoyment of any Unit.

(j) Satellite Dishes; Exterior Apparatus. No exterior radio antenna, television antenna, or other antenna, satellite, dish, or audio or visual reception device of any type, may be placed within the Community unless completely enclosed within an Improvement or otherwise concealed from view; provided, however, that the requirements of this Subsection 9.3(j) shall not apply to those "antenna" which are specifically covered by the Telecommunications Act of 1996, as amended from time to time, or regulations adopted thereunder. As to an "antenna" which is specifically covered by the Telecommunications Act of 1996, as amended, or regulations adopted thereunder, the Committee shall be empowered to adopt rules and regulations establishing reasonable, non-discriminatory restrictions or requirements relating to appearance, safety, location and maintenance.

9.4 Use Restrictions.

(a) Parking.

(i) Unless specifically provided for in the Rules and Regulations of the Association, no parking shall be allowed on any of the public streets within River Club with the exception of temporary visitor parking. When a visitor plans to stay at a Unit for more than two consecutive nights, the Owner or Related User shall notify the Executive Board or its designee and obtain approval for the extended visitor parking. These restrictions shall not apply to the overnight parking areas designated for Motor Court, which is intended for use as visitor parking.

(ii) All parking within River Club shall be subject to any applicable County ordinances and to any Rules and Regulations promulgated by the Association or the Master Association, including without limitation any such Rules and Regulations that may be promulgated by the Association for the purpose of governing parking on public streets.

(b) Use. All Units shall be used only for those uses and purposes allowed by applicable County zoning ordinances and regulations.

(c) Exterior Lighting Fixtures. All lighting fixtures installed on or outside the exterior walls of any dwelling or other structure shall be subject to the approval of the Design Review Committee for harmonious development and the prevention of lighting nuisances to other Units and Common Elements in River Club. Such lighting fixtures also shall comply fully with any applicable County lighting ordinances, regulations or requirements.

ARTICLE 10 EASEMENTS AND RESERVATIONS

10.1 **Easements of Encroachment.** Reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachments, are hereby granted and created between each Unit and any adjacent Common Elements and between adjacent Units due to the unintentional placement or the settling or shifting of any Improvements constructed, reconstructed, or altered thereon to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no

event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner. All real property within River Club shall be subject to all easements set forth herein, as shown on the Plat or any other plat, those of record, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act, and an easement for maintenance of any such encroachment), and otherwise as set forth is in this ARTICLE 10.

10.2 Easements for Utilities. Declarant hereby reserves, for itself and the Association, and for any governmental entities or utility companies providing utility services to Units, access and maintenance easements upon, across, over, and under all of the Common Elements to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any cable television systems, security and similar systems, roads, walkways, bicycle pathways, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water and sewer lines and facilities, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing within easements designated for such purposes on the Plat. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any structure or other improvement constructed within any Common Elements, and any damage to any such structure or other improvement resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

10.3 Easements Over Common Elements. The Declarant hereby reserves for the Association and for the Declarant and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Elements for the purposes of enjoyment, use, access, and development of all or any portion of the River Club. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused by it or its agents or employees to the Common Elements as a result of vehicular traffic connected with the development of River Club.

10.4 Easements Over Unit Areas. Declarant hereby reserves, for itself, the Association and its duly authorized agents, representatives, and employees, access and maintenance easements upon, across, over, and under all of the Units to the extent necessary to install, maintain and repair the Unit Landscaping and Common Element Landscaping and to maintain those Improvements that the Association has expressly undertaken the responsibility to install or maintain in order to ensure River Club is maintained in the superior condition contemplated in this Declaration and the Governing Documents. Any damage caused by the Association's entry onto a Unit for the purposes specified herein shall be repaired by the Association as a Common Expense. To the extent damage to a Unit is caused by the willful misconduct of any authorized agent, representative or employee, the Association shall use reasonable efforts to recover the costs associated with the repair from the party engaging in the misconduct.

10.5 **Right of Entry.** In addition to the enforcement rights the Association is granted in Section 5.4 and ARTICLE 8 above the Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to the Governing Documents, and to inspect for compliance with this Declaration and the other Governing Documents, which right may be exercised by any member of the Executive Board, the Association and its officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and any damage caused by entry shall be repaired by the Association as a Common Expense. 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 if an Owner fails or refuses to cure the condition within a reasonable time after request by the Executive Board. In no event will the provisions of this Section authorize entry into any dwelling without the prior consent of the Owner.

ARTICLE 11 MORTGAGEE PROVISIONS

THE FOLLOWING PROVISIONS ARE FOR THE BENEFIT OF INSTITUTIONAL FIRST MORTGAGEES. THE PROVISIONS OF THIS ARTICLE APPLY TO BOTH THIS DECLARATION AND TO THE BYLAWS, AND SHALL HAVE PRIMACY OVER ANY CONFLICTING PROVISIONS CONTAINED THEREIN; UNLESS ANY PROVISION IS PROHIBITED BY, OR CONFLICTS WITH, THE ACT.

11.1 **Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless Members representing at least sixty-seven percent (67%) of the total Association vote entitled to be cast thereon consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Elements which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner (any action, including contracts, by the Executive Board, shall not be subject to this provision if such action is otherwise authorized by this Declaration or the Bylaws);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Elements (the issuance and amendment of architectural standards, procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

- (d) Fail to maintain insurance as required by this Declaration; or
- (e) Use hazard insurance proceeds for any Common Elements losses for other than the repair, replacement, or reconstruction of such property.

11.2 Institutional First Mortgagees. Institutional First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Elements, may pay overdue premiums on casualty and liability insurance policies or secure new casualty and liability insurance coverage upon the lapse of an Association policy, and Institutional First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

11.3 Amendment by the Executive Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements as set forth in this Article or make any such requirements less stringent or amend or expand such requirements, the Executive Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

11.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Executive Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

11.5 HUD/VA Approval. To the extent required by said agencies, until the Turnover Date set forth in Section 1.5(ff)(ii), the following actions shall require the prior approval of the Federal Housing Administration or the United States Department of Veterans Affairs, if either such agency is insuring or guaranteeing Mortgages that encumber any portion of River Club:

- (a) annexation of additional property not otherwise identified for annexation in this Declaration;
- (b) dedication, conveyance or mortgaging of Common Elements; or
- (c) material amendment of this Declaration.

ARTICLE 12 INSURANCE/CONDEMNATION

12.1 General Requirements. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, and at all times, the insurance coverage set forth in this ARTICLE 12 and in the Act, as from time to time amended, and such additional insurance as the Executive Board determines is prudent or necessary to indemnify the Association, the Executive Board and the Owners.

(a) All insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Instrument 201000407513 OR Book 547 Page 682

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

(c) Any insurance obtained by the Association shall name the Association, the Executive Board, the manager or managing agent, if any, the officers of the Association, Declarant and Owners as insureds, or additional insureds, as their interests may appear.

(d) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of First Mortgages at least ten (10) days prior to expiration of the then current policies.

12.2 Claim Submittal. The Rules and Regulations may include nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. If more than one Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association. Any portion of the Common Elements for which insurance is required under this Declaration which is damaged or destroyed must be promptly repaired or replaced substantially in accordance with the plans and specifications for the improvement in question. To the extent the insurance proceeds are insufficient to pay for the restoration, the deficiency shall be assessed as Common Expense.

12.3 Association Liability Insurance. The Association shall obtain an adequate comprehensive policy of public liability and property damage liability insurance covering all of the Common Elements, in such limits as the Executive Board may from time to time determine, but not in any amount less than One Million Dollars (\$1,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association including "non-owned" automobile coverage, and activities in connection with the ownership, operation, maintenance and other uses of the River Club community.

12.4 Fire and Casualty Insurance. Each Owner shall be responsible for all insurance covering loss or damage to personal property in his Unit in accordance with C.R.S. § 38-33.3-313(7), and liability for injury, death or damage occurring inside his Unit. Any such policy shall name the Association, the Executive Board, the manager or managing agent, if any, the officers of the Association, the Declarant, and any other Owners of adjoining Units, as additional insureds, and shall contain waivers of subrogation and shall be so written that the liability of the

carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

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

12.6 Association Fidelity Insurance. The Association and the manager or managing agent, if any, shall obtain policies of fidelity insurance in the amounts prescribed by the Act, as amended from time to time, to protect against dishonest acts on the parts of its officers, directors, trustees, employees, agents and fiduciaries and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees, employees, agents and fiduciaries.

12.7 Association Officers' and Directors' Personal Liability Insurance. The Association shall obtain an expansive form of officers' and directors' personal liability insurance to protect the officers, directors and committee members (including, but not limited to, members of the Design Review Committee) from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

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

12.9 Allocation of Insurance Costs and Expenses. Except as otherwise provided in the Act and the Governing Documents, all costs and expenses borne by the Association in compliance with this Section, including without limitation insurance premiums, and all costs and expenses borne by the Association in connection with insured and uninsured losses to persons or property within River Club, repairs and replacement of insured and uninsured property, and claims settlement or adjustment shall be considered Common Expenses.

12.10 Condemnation. Condemnation of all or any portion of River Club shall be governed by the provisions of the Act.

**ARTICLE 13
RESERVATION OF DECLARANT RIGHTS**

13.1 Special Declarant Rights. Subject to the provisions and restrictions contained in the Act, Declarant hereby reserves the power and authority to exercise and engage in the following rights at any time from the Effective Date of this Declaration until the Turnover Date set forth in Section 1.5(ff)(ii) above: