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**AMENDED AND RESTATED MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
RED ROCKS VALLEY**

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**AMENDED AND RESTATED MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**  
  
for  
**RED ROCKS VALLEY**

THIS AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RED ROCKS VALLEY (this "Declaration") is made this 14<sup>th</sup> day of September, 2012, by RED ROCKS REAL ESTATE PARTNERS, LLC, a Colorado limited liability company (the "Declarant").

**RECITALS**

A. WHEREAS, Redlands Valley Cache, LLC, a Colorado limited liability company, caused that certain Declaration of Covenants, Conditions and Restrictions of Red Rocks Valley Subdivision to be recorded on October 10, 2008 at Reception No. 2461312 in Book 4739 at Page 365 of the real estate records of Mesa County, Colorado and including any amendments or supplements thereto ("Prior Declaration"). Redlands Valley Cache, LLC assigned all Declarant Rights under the Prior Declaration to Red Rocks Real Estate Solutions, LLC pursuant to that certain Assignment of Declarant Rights recorded on April 11, 2011 at Reception No. 2568720 of the real estate records of Mesa County, Colorado.

B. WHEREAS, on September 30, 2011, Declarant purchased the following described real property (the "Real Estate") subject to the Prior Declaration and in connection therewith received an assignment of all Declarant Rights under the Prior Declaration pursuant to that certain Assignment of Declarant Rights recorded on October 5, 2011 at Reception No. 2586910 of the real estate records of Mesa County, Colorado:

LOTS 1 THROUGH 6, INCLUSIVE, IN BLOCK 1;  
LOTS 1 THROUGH 17, INCLUSIVE, IN BLOCK 2;  
LOTS 1 THROUGH 9, INCLUSIVE, IN BLOCK 3;  
LOTS 1 THROUGH 10, INCLUSIVE, IN BLOCK 4;  
LOTS 1 THROUGH 52, INCLUSIVE, IN BLOCK 5; AND  
LOTS 1 THROUGH 4, INCLUSIVE, IN BLOCK 6;  
TRACT J  
ALL IN RED ROCKS VALLEY, COUNTY OF MESA  
STATE OF COLORADO

C. WHEREAS, Declarant desires to amend and restate the Prior Declaration in accordance with the terms and provisions set forth in this Declaration to subject and place upon the Real Estate certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein.

D. The Real Estate is a "planned community" for purposes of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 to 319.

**NOW, THEREFORE,** Declarant hereby declares that all of the Real Estate property described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with, the above-described Real Estate and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

## CHAPTER ONE

### DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meaning specified in this Article I.

1. "Act" means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et al., as amended.

2. "Agency" means and collectively refers to the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

3. "Allocated Interests" means the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest of each Lot shall be equal to a fraction, the numerator of which is 1 and the denominator of which is the total number of Lots within the Common Interest Community from time to time. The Allocated Interest of each Lot in the Common Interest Community, at the time of recording of this Declaration, shall be 1/24<sup>TH</sup>, provided that such Allocated Interests will change if additional Lot(s) are annexed to this Declaration or if any Lots initially included as Lots under this Declaration are subsequently acquired by the Association and converted to Common Elements.

4. "Annexable Property" shall mean the real property, more particularly described on Exhibit B attached hereto, including all rights and easements, if any, appurtenant thereto.

5. "Architectural Review Committee" means the Architectural Review Committee established pursuant to Article III hereof.

6. "Articles of Incorporation" shall mean the Articles of Incorporation of the Amended and Restated Red Rocks Valley Homeowners Association, Inc., a Colorado non-profit corporation which have been filed in the office of the Secretary of State of the State of Colorado, as the same may be further amended from time to time.

7. "Association" means Red Rocks Valley Homeowners Association, Inc., a homeowners' association organized under Section 38-33.3-301 of the Act.

8. "Association Properties" shall mean all real and personal property: (a) now or hereafter owned by the Association; (b) with respect to which the Association holds an easement or license for the use, care or maintenance thereof; or (c) for which the Association has a right or duty to maintain and which is held for the common use and enjoyment of the Members as provided herein, or for such other purposes as may be permitted by this Declaration.

9. "Builder" means any Member other than Declarant who acquires (or has acquired prior to annexation to this Declaration) one or more Lots for the purpose of constructing a residence thereon and who is designated as a Builder by Declarant in its sole discretion from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument duly recorded in the office of the Clerk and Recorder of Mesa County, Colorado (the "Records"). Declarant hereby designates Pauls Homes, LLC, a Colorado limited liability company, as a Builder hereunder.

10. "Bylaws" shall mean the Amended and Restated Bylaws of the Association, which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

11. "City of Grand Junction" means the City of Grand Junction, a body politic.

12. "Common Elements" means any real estate owned or leased by the Association other than a Lot, and also includes the easements, monument signs and rights-of-way dedicated by the Plat, including the open space and drainage and utility easements (respectively, the "Open Space and Easements") dedicated to the Association by or shown on the Plat, and such other easements and rights-of-way as may be assigned to the Association from time to time.

13. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot based on its Allocated Interest.

14. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

15. "Common Interest Community" means the real estate shown on the Plat, as the same may be supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Lot, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration.

16. "Declarant" means Red Rocks Real Estate Partners, LLC, a Colorado limited liability company, together with any other Person(s) acting in concert, to whom such Declarant, by recorded document, expressly assigns one or more of such Declarant's rights under this Declaration, and who (a) as part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser, or (b) reserves or succeeds to any Special Declarant Right, as to the Property or the Annexable Property.

17. "Declaration" means this Amended and Restated Master Declaration of Covenants, Conditions and Restrictions and any other recorded instruments, however denominated, that create this Common Interest Community, including any amendments to those instruments and also including, but not limited to, plats and maps.

18. "Development Rights" means any right or combination of rights reserved by a Declarant in this Declaration to add real estate to this Common Interest Community and to create Lots or Common Elements within this Common Interest Community in connection with the addition of such real estate.

19. "Executive Board" means the body, regardless of name, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.

20. "Expansion Property" means that real property as to which Special Declarant Rights have been reserved and as described more particularly on Exhibit C attached hereto and incorporated herein by this reference.

21. "Special Development Rights Holder" means SurfView Development Co., a California corporation, and any Person or group of Persons acting in concert, or their successors to whom Special Development Rights Holder has assigned Special Declarant Rights, by recorded document, as to the Expansion Property only.

22. "First Security Interest" means a Security Interest that has the priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

23. "Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, outbuildings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, fences, screening walls,

retaining walls, landscaping, hedges, windblocks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, mail kiosks and signs.

24. "Lot" means any separate numbered lot shown upon the initial Plat or any other recorded subdivision plat of the Property or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements and any public streets.

25. "Lots that May Be Created" means Two Hundred Fourteen (214) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including those Lots which may be included if all of the property provided for in Chapter Five hereof, is annexed into this Declaration.

26. "Map" means the plat of the Property, which is Recorded with and made a part of this Declaration, as such plat may hereafter be amended or supplemented in accordance with this Declaration which depicts certain portions of the Common Interest Community and which further depicts and locates thereon items as may be required by the Act. The term "Map" shall also include all amendments to the plat and such other Supplemental Maps recorded by the Declarant for the purposes of annexing Annexable Property to the Common Interest Community.

27. "Member" means each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

28. "Owner" means Declarant, Builder, Special Development Right Holder, or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.

29. "Period of Declarant Control" means a length of time expiring thirty (30) years after initial recording of this Declaration in the Records; provided, however, that the Period of Declarant Control shall terminate no later the period commencing on the date of recordation of this Declaration and ending upon the occurrence of the earlier of any one of the following events: (a) sixty (60) days after the conveyance of seventy-five percent (75%) of the total number of Lots That May Be Created within the Common Interest Community have been conveyed to Persons other than Declarant; (b) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; (c) two (2) years after any right to add new Lots was exercised by Declarant; or (d) when, in its discretion, Declarant so determines.

30. "Person" means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or any combination thereof.

31. "Plans and Specifications" means drawings, renderings, and all other documentation or information relevant to the Improvement or proposal in question.

32. "Plat" means the plat of Red Rocks Valley Subdivision recorded in the Mesa County Clerk and Recorder records on October 10, 2008 at Reception No. 2461307, Book 4739, Page 346, together with all subdivision plats for property annexed

to this Declaration pursuant to Chapter Five hereof, as any of the same may be amended or modified from time to time.

33. "Property" means all of the real property legally described on Exhibit A.

34. "Property Restrictions" means this Declaration, together with any and all supplemental declarations which may be recorded pursuant to Chapter Five hereof, as this Declaration or said supplemental declarations may be amended from time to time, together with the Rules from time to time in effect.

35. "Record, Recorded and Recordation" means, with respect to any document, the recordation of such document in the records.

36. "Rules" means the rules adopted by Declarant or the Association, as the same may be amended from time to time.

37. "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

38. "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any security interest or any successor to the interest of any such Person under such Security Interest.

39. "Special Declarant Rights" means rights reserved for the benefit of a Declarant to perform the following acts: To complete improvements indicated on plats and maps filed with this Declaration; to exercise any Development Right; to maintain any Development Right; to maintain sales offices, management offices, signs advertising the Common Interest Community, and models; to use easements through the Common Interest Community for the purpose of making Improvements within the Common Interest Community or within real estate which may be added to the Common Interest Community; to make the Common Interest Community subject to a master association; to merge or consolidate a Common Interest Community of the same form of ownership; or to appoint or remove any Officer of the Association or any Executive Board member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Common Interest Community. Declarant may exercise any all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically upon the conveyance of the last Lot by a Declarant to an Owner other than Declarant.

40. "Subdivision" means the parcel of land which has been shown as a legally described subdivision on the Plat pursuant to C.R.S. Chapter 106, Article 2, together with all additional parcels of land legally described on any future subdivision plats for

property annexed to this Declaration pursuant Chapter Five hereof, as any of the same may be amended or modified from time to time.

41. "Supplemental Declaration" means any declaration of covenants, conditions and restrictions which may be hereafter Recorded by Declarant.

42. "Supplemental Map" shall mean and include any land survey plat which is Recorded by Declarant for the purpose of annexing the real property described thereon to the Common Interest Community.

## **CHAPTER TWO** **THE ASSOCIATION**

### **ARTICLE I**

#### **ASSOCIATION MEMBERSHIP**

1. Membership. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Common Interest Community, of all former Owners entitled to distributions of proceeds under the Act their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

2. One Class of Membership. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Lot owned in accordance with the Allocated Interest attributable to such Lot, except that no votes allocated to a Lot owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association. Except as otherwise provided in Article II of this Declaration during the Period of Declarant Control, Declarant or Persons appointed by Declarant may appoint all officers and directors of the Association and may remove all officers and directors of the Executive Board which have been appointed by such Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control; but, in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

3. Bylaws of the Association. The Bylaws shall govern the administration of the Association and the membership of each Owner in the Association.

## ARTICLE II

### EXECUTIVE BOARD MEMBERS AND OFFICERS

1. Authority of the Executive Board. Except as provided in this Declaration or the Bylaws, the Executive Board may act in all instances on behalf of the Association

2. Election on Part of Executive Board During Period of Declarant Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May be Created to Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Owners other than Declarant. No later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Created to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Owners other than Declarant.

3. Authority of Declarant During Period of Declarant Control. During the Period of Declarant Control, until such time as Owners other than Declarant are entitled to elect members of the Executive Board pursuant to Section 2 of this Article, Declarant or Persons appointed by the Declarant may appoint all officers and directors and may remove all officers and directors of the Executive Board appointed by it.

4. Termination of Period of Declarant Control. Within sixty (60) days of the expiration of the any Period of Declarant Control, the Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than the Declarant. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

5. Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Executive Board, Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, as required by the Act.

6. Budget. Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget, not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the vote of eighty percent (80%) of the Allocated Interests rejects the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

**ARTICLE III**  
**ARCHITECTURAL REVIEW COMMITTEE**

1. Members of the Architectural Review Committee. The Architectural Review Committee shall consist always of either three (3) members or five (5) members. The Architectural Review Committee may increase the number of members of the Architectural Review Committee to five (5). Each member of the Architectural Review Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

2. Declarant's Rights of Appointment. During the Period of Declarant Control, Declarant shall have the right to appoint and remove all members of the Architectural Review Committee with or without cause. Thereafter, the Owners shall have the right to appoint and remove all members of the Architectural Review Committee by an affirmative vote thereof in accordance with the Association's Bylaws.

3. Review of Proposed Construction/Right to Issue Rules. Whenever in this Declaration the approval of the Architectural Review Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which in its sole discretion are relevant. Prior to the commencement of any construction of an Improvement on any residential Lot other than the original residence constructed thereon, the Plans and Specifications therefor shall be submitted to the Architectural Review Committee, and construction thereof may not commence unless and until the Architectural Review Committee has approved such Plans and Specifications in writing. The Architectural Review Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Association, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Review Committee. The Architectural Review Committee shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures. The Architectural Review Committee may require as a condition to its approval of Plans and Specifications such changes to the Plans and Specifications as it deems appropriate, and may require submission of additional Plans and Specifications or other information prior to approving or disapproving the material submitted. The Architectural Review Committee may also issue rules or guidelines regarding anything relevant to its function, including, but not limited to minimum standards and procedures for the submission of Plans and Specifications for approval. The Architectural Review Committee may require a reasonable fee to accompany each application for approval. The Architectural Review Committee may require such detail in Plans and Specifications submitted for its review and such other information as it deems proper,

including, without limitation, environmental impact statements. Until receipt by the Architectural Review Committee of all required Plans and Specifications and other information, the Architectural Review Committee may postpone review of anything submitted for approval.

4. Meetings of the Architectural Review Committee. The Architectural Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Review Committee may from time to time by resolution unanimously adopted in writing designate one of its members to make any action or perform any duties for and on behalf of the Architectural Review Committee, except the granting of variances pursuant to Section 8 of this Article. In the absence of such designation, the vote of a majority of all of the members of the Architectural Review Committee, or the written consent of a majority of all of the members of the Architectural Review Committee taken without a meeting, shall constitute an act of the Architectural Review Committee.

5. No Waiver of Future Approvals. The approval or consent of the Architectural Review Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different person.

6. Compensation of Members. The members of the Architectural Review Committee shall not be entitled to compensation from the Owners for services rendered, but shall be entitled to reimbursement for expenses incurred by them in the performance of their duties hereunder. Such reimbursement shall be determined by Declarant during the Period of Declarant Control and thereafter by the Owners.

7. Inspection of Work.

a. Completed Work. Inspection of completed work and correction of defects therein shall proceed as follows:

(1) Upon the completion of any Improvement for which approved Plans or Specifications are required under this Declaration, the Owner shall give written notice of completion to the Architectural Review Committee.

(2) Within such reasonable time as the Architectural Review Committee may set in its Rules, but not to exceed fifteen (15) days thereafter, the Architectural Review Committee or its duly authorized representative may inspect such Improvement. If the Architectural Review Committee finds that such work was not done in strict compliance with all approved Plans and Specification submitted or required to be submitted for its prior approval, it shall notify the Owner in writing of such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.

(3) If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the Architectural Review Committee shall notify the Owner in writing of such failure. Upon notice and hearing, the Architectural Review Committee shall determine whether there is a noncompliance, and if so, the nature thereof and the estimated cost of correcting or removing the same, as determined by the Architectural Review Committee in its reasonable discretion. If noncompliance exists, the Owner shall remedy or remove the same within a reasonable period of time (as determined with reference to the nature and extent of the noncompliance and the existence of any exigent circumstances) following the date of announcement of the Architectural Review Committee ruling. If the Owner does not comply with the Architectural Review Committee's ruling within such time period, the Architectural Review Committee, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Architectural Review Committee upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Architectural Review Committee, the Architectural Review Committee shall levy an assessment against such Owner and the Improvement in question and the land upon which the same is situated for reimbursement and the same shall constitute a lien upon such land and Improvement (and which lien may be perfected upon recordation of a notice thereof in the Records) and be enforced as provided in this Declaration. The Architectural Review Committee shall have the right to take further or alternative actions, including the assessment of fines or other penalties, as the members of the Architectural Review Committee, in their sole but reasonable discretion, shall deem necessary or appropriate to compel compliance by the Owner with the provisions of this Declaration.

b. Work in Progress. The Architectural Review Committee may inspect all work in progress and give notice of noncompliance as provided above in subparagraph (2) of Section 7(a). If the Owner denies that such noncompliance exists, the procedures set out in subparagraph (3) of Section 7(a) shall be followed, except that no further work shall be done, pending resolution of the dispute, which would hamper correction of the alleged noncompliance.

8. Variance. The Architectural Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon heights, bulk, size, shape, floor area, land area, placement of structures, set-backs, building envelopes, colors, materials, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental consideration may, in its sole and absolute discretion, warrant. Such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the Architectural Review Committee. If such a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration, for any purpose, except as to the particular Lot and particular provision and in the particular instance covered by the variance.

9. Obligations With Respect to Zoning and Subdivisions. All Owners must comply fully with the planning, building and zoning department regulations and any other ordinances, rules, or regulations enacted by the County of Mesa, Colorado, the State of Colorado, or any other governmental or quasi-governmental authorities having jurisdiction over the Property insofar as the same are applicable and as the same may hereafter be amended. Approval of an Owner's Plans and Specifications by the Architectural Review Committee shall not obviate or otherwise satisfy such Owner's obligation to obtain any necessary approvals required by governmental or quasi-governmental agencies in connection with construction of any proposed Improvements.

10. Non-liability of Architectural Review Committee Members. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner or to any other Person for any loss, damage, or injury arising out of or in any way connected with the performance of the Architectural Review Committee's duties under this Declaration unless due to the willful and wanton misconduct or bad faith of the Architectural Review Committee or its member, as the case may be. The Architectural Review Committee shall review and approve or disapprove all Plans and Specifications submitted to it for any proposed Improvement including the construction, alteration, or addition thereof or thereto, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the surrounding area and the Property generally. The Architectural Review Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes, and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

11. Indemnification.

a. Third Party Actions. The Owners may indemnify any person who was or is a party or is threatened to be a party in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Architectural Review Committee), by reason of the fact that he is or was a director, officer, employee, servant, or agent of the Architectural Review Committee against expenses including attorneys fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith, and in a manner he reasonably believed to be in or not opposed to the best interests of the Architectural Review Committee, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in or not opposed to the best interests of the Architectural Review Committee, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

b. Derivative Actions. The Architectural Review Committee may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Architectural Review Committee to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, servant or agent of the Architectural Review Committee, against expenses (including reasonable attorneys' fees), actually and reasonably incurred by him in connection with the defense or settlement of such action, proceeding or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Architectural Review Committee, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Architectural Review Committee, unless and only to the extent that the Court in which such action, proceeding or Lot was brought shall determine upon application that, despite the adjudication of liability and in view of all the circumstances of this case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

c. Determination. Any indemnification which the Architectural Review Committee has elected to provide under Paragraph (a) or (b) of this Section 11 (unless ordered by a court) shall be made by the Architectural Review Committee only as authorized in the specific case upon a determination that indemnification of the officer, director, employee, servant or agent is properly in the circumstances because he has met the applicable standard of conduct set forth in Paragraph (a) or (b) of this Section. Such determination shall be made (a) by the Architectural Review Committee by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; provided, however, that if a director, officer, employee, servant or agent of the Architectural Review Committee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraph (a) or (b) of this Section, or in defense of any claim, issue or matter therein, then, to the extent that the Architectural Review Committee has elected to provide indemnification, he shall automatically be indemnified against expenses (including attorneys fees) actually and reasonably incurred by him in connection therewith without the necessity of any such determination that he has met the applicable standard of conduct set forth in Paragraph (a) of this Section.

d. Payment in Advance. Expenses incurred in defending a civil or criminal action, suit or proceeding may, in the discretion of the Architectural Review Committee, be paid by the Architectural Review Committee in advance of the final disposition of such action, suit or proceeding as authorized by the Architectural Review Committee as provided in Paragraph (c) of this Section upon receipt of an undertaking by or on behalf of the director, officer, employee, servant or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Architectural Review Committee as authorized in this Section.

e. Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, servant, or agent of the Architectural Review Committee, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Architectural Review Committee would have the power to indemnify him against such liability hereunder or otherwise.

f. Other Coverage. The indemnification provided by this Section shall not be deemed exclusive of any other rights to which anyone seeking indemnification may be entitled under this Declaration, agreement, vote of the Owners, vote of disinterested directors, Colorado law, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and may continue as to a person who has ceased to be a director, officer, employee, servant or agent or may inure to the benefit of the heirs and personal representatives of such a person.

#### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot which is subject hereto or which has been annexed by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees and shall be obligated to pay to the Association: Annual assessments or charges, special assessments, and other, charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot. Additionally, each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessments were assessed. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be

empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

3. Initial Annual Assessments. Until the effective date of an Association budget ratified by the Owners with a different amount for the Common Expense assessment, as provided above, the amount of the annual Common Expense assessment against each Lot shall be computed at the rate of Fifty Dollars (\$50.00) per Lot per month.

4. Rate of Assessment. Annual and special assessments shall be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association. The Common Expense assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis (including the Open Space and Easements) and for the payment of insurance deductibles. All Common Expenses shall be assessed against all the Lots in accordance with the Allocated Interests set forth in this Declaration. If the Common Expense Liability is reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liability.

5. Date of Commencement of Annual Assessments. Until the Association makes a Common Expense assessment, the date of commencement of which shall be set by the Executive Board in its sole discretion, shall pay all Common Expenses for the Property and Annexable Property. After any assessment has been made by the Association, assessments shall be made no less frequently than annually and shall be based on a budget adopted by the Association as provided above. The annual Common Expense assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Executive Board determines in its discretion from time to time. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

6. Special Assessments. In addition to the annual Common Expense assessments authorized in this Article, the Association, with the approval of two-thirds (2/3) of a quorum of Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, may levy, in any fiscal year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any operating deficit incurred by the Association or for paying any costs or expenses associated with the Open Space and Easements. Any such special assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration. A meeting of the Members

called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 7 of this Article IV. Notwithstanding the foregoing, special assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

7. Notice and Quorum for Any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8. Assessments/Charges for Services to Fewer than All Lots. The Association may, at any time from time to time, provide services to fewer than all of the Lots. Any such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lots for which such service is to be provided, with such agreement to include a statement of the costs, fees and expenses reasonably expected to initially be incurred by the Association in providing such service(s), including overhead expenses of the Association. Services which may be provided by the Association pursuant to this Section 8 include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned, leased or maintained by such Owner(s); (b) the provision of any services or functions to Lots such as trash removal or the maintenance of the exteriors of residences or Improvement(s) on the Lots; (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owner(s); and (e) the procurement of insurance for Owners. The Association may, at its election, at any time from time to time, collect the aforesaid costs, fees, expenses and other charges from Owners to whom such services are provided, in advance or arrears, in monthly or other installments, or in addition to and on the same date for payment of, the Common Assessments.

9. Lien for Assessments.

a. The Association has a statutory lien on a Lot for any assessment levied against that Lot or for fines imposed against its Owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all of those items set forth in this section from the time such items become due. If an assessment is payable in installments, such installment is a lien from the time it becomes due.

b. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

However, the Executive Board or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

c. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments become due.

10. Priority of Association Lien.

a. A lien under this Article is prior to all other liens and encumbrances on a Lot except:

(1) Liens and encumbrances recorded before the recordation of the Declaration;

(2) A First Security Interest on the Lot which has priority over all other Security Interests on the Lot and which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

(3) Liens for real estate taxes and other governmental assessments or charges against the Lot.

b. A lien under this Section is also prior to the Security Interests described in the preceding subsection (a) to the extent of an amount equal to the Common Expense assessments based on a periodic budget adopted by the Association as provided above, which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a non-judicial foreclosure either to enforce or extinguish the lien.

c. This option does not affect the priority of mechanics' or material men's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended.

11. *Reserved.*

12. Receiver. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments.

13. Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

14. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Executive Board, and the Executive Board may assess thereon a late charge not in excess of Twenty-Five and No/100 Dollars (\$25.00) per month, with the exact amount of such charge to be determined by the Executive Board. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges, as above provided. No Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration created a lien nor to prohibit the Association from taking a deed in lieu of foreclosure.

15. Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves and need not be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future Common Expense Assessments.

16. Assessments for Misconduct. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that Common Expense exclusively against such Owner and his Lot.

#### **ARTICLE V - RESERVED**

**ARTICLE VI**  
**INSURANCE**

1. Extent of Coverage. The Association may maintain insurance in connection with parcels of real property which the Association has an obligation to maintain, repair and/or reconstruct. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a Common Expense. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amounts of insurance it needs to obtain, the then existing requirements of any of the Agencies with respect to their insurance, guaranty, or purchase of Security interests. The Association will not obtain any insurance on individual Lots and such insurance shall be the sole obligation of the applicable Lot Owner.

a. A policy of property insurance covering all parcels of real property for which the Association has the duty to repair and/or reconstruct, except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

b. A comprehensive policy of public liability insurance covering parcels of real property which the Association has the obligation to maintain, repair and/or reconstruct, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) covering bodily injury, including death to persons, personal injury and property liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of all parcels of real property for which the Association has the obligation to maintain, repair and/or reconstruct, legal liability arising out of lawsuits related to employment contracts of the Association, protection against liability for non-owned and hired automobiles, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location and use. Such insurance shall insure the Executive Board, and the Association. The Declarant and Builders shall be included as additional insureds in their capacity as Owners. The Owners shall also be

included an additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements or other property insured by the Association from time to time. The insurance shall cover claims of one or more insured parties against other insured parties.

c. A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, owners, and trustees of the Common Interest Community, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate Common Expense assessments on the Lots. The Association may carry fidelity insurance in amounts greater than required hereinabove and require any independent contracts employed for the purposes of managing the Common Interest Community to carry more fidelity insurance coverage than required hereinabove. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Association as an obligee;

(2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provision of this subparagraph (c).

d. If any parcels of real property which the Association has an obligation to repair or reconstruct are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

(1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

e. In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in

relation to their duties and responsibilities acting as directors and officers on behalf of the Association.

2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard noncontributor Security Interest Holder's clause in favor of each Security Interest Holder of a First Security Interest and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder of a First Security Interest, insurer or Declarant of a First Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the owner in question, to any party in interest, including Security Interest Holders of First Security Interests, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any owner or member of his household. All policies shall contain waivers of any defense based on invalidity arising from any acts, omissions or negligence of an Owner where such Owner is not under the control of the Association.

3. Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of One Thousand Dollars (\$1,000.00) or one percent (1%) of the face amount of the policy. The Association shall assess each Owner its pro-rata share of any deductible paid by the Association.

a. To the extent the Association settles claims for damages, 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.

b. The Association may determine that a loss, either in the form of deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

4. Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in the trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 1 of Article VII of this Declaration, the

proceeds may be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated.

5. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

6. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

7. Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the improvements thereon, and the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot, including any portions of any Lot to be maintained by the Association, if any, shall be the responsibility of the Owner of such Lot.

8. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the Improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

**ARTICLE VII**  
**DAMAGE OR DESTRUCTION**

1. Damage or Destruction.

a. Any portion of the Common Interest Community for which insurance is carried by the Association under this Declaration, and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (1) The Common Interest Community is terminated;
- (2) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (3) Eighty percent (80%) of all of the Owners vote not to rebuild; or
- (4) Prior to the conveyance of any Lot to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Interest Community rightfully demands all or a substantial part of the insurance proceeds.

b. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. If the Entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liability of all the Lots.

2. Lots. Any damage to or destruction of any structure located on a Lot on which insurance is not carried by the Association shall, except as hereafter provided, be promptly repaired and reconstructed by the Owner thereof using insurance proceeds and personal funds of such Owner. "Repaired and reconstructed," as used in this paragraph, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a residence located on a Lot shall be destroyed or so damaged that the residence is no longer habitable, then the Owner of such Lot shall, within a reasonable time not to exceed one hundred twenty (120) days after the event resulting in such damage or damage or destruction, either commence and diligently pursue repair or reconstruction of the residence or demolish the same. Demolition of a residence shall include removal of any foundation slab, basement walls and floors, regarding of the Lot to a level condition, and reseedling such Lot with native grass, such that the Lot shall be restored to a saleable condition. If the Owner of a Lot does not either commence repair, reconstruction or demolition activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Architectural Review Committee, then the Association

may, in its reasonable discretion, after providing the notice required herein, enter upon the Lot for the purpose of demolishing the residence and then landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be subject to all the terms and provisions applicable to assessments as provided in Article IV hereof, including without limitation, interest, late charges and lien rights.

## ARTICLE VIII

### SECURITY INTEREST HOLDERS OF FIRST SECURITY INTERESTS

1. Approval by Members and Security Interest Holders of First Security Interests. Notwithstanding any provisions of this Declaration to the contrary, the Association shall not:

a. unless it has obtained the prior written consent of the Members casting at least sixty-seven percent (67%) of the votes in the Association or of those Security Interest Holders holding at least sixty-seven percent (67%) of the First Security Interests (based upon one vote for each First Security Interest owned):

(1) by act or omission, seek to abandon or terminate the Common Interest Community;

(2) change the Allocated Interest of any Lot in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the Allocated Interest of each Lot in the Common Elements (however, this requirement will be deemed waived to the extent necessary to allow phasing, add-ons, or annexations in accordance with this Declaration);

(3) partition or subdivide any Lot;

(4) seek to abandon, partition, subdivide, encumber, sell, or transfer any Common Elements by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Common Interest Community is not a transfer within the meaning of this clause. (However, this requirement will be deemed waived to the extent necessary to allow phasing, add-ons, or annexations, in accordance with this Declaration); or

(5) use hazard insurance proceeds for losses to any property in the Common Interest Community (whether Lots or Common Elements) for other than the repair, replacement or reconstruction of such property.

b. Unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the total allocated votes in the Association, and fifty-one percent (51%) of the Security Interest Holders holding First Security Interests (based on one vote for each First Security Interest owned), add or amend any material provisions of this Declaration (excluding the Original Covenants), the Articles of Incorporation or Bylaws

of the Association which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and provided, further, that the implied approval of any Security Interest Holder of a First Security Interest shall be assumed if such Security Interest Holder fails to submit a response to any written proposal for an amendment with thirty (30) days after such Security Interest Holder receives proper notice of the proposal delivered by certified or registered mail with a "return receipt" requested:

- (1) voting rights;
- (2) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%) over the previous year's assessment amount, assessment liens or the priority of assessment liens;
- (3) reduction in reserves for maintenance, repair and replacement of Common Elements;
- (4) responsibility for maintenance and repairs;
- (5) reallocation of Interests in the Common Elements, or rights to their use;
- (6) redefinition of any Lot boundaries;
- (7) convertibility of Lots into Common Elements or vice versa;
- (8) expansion or contraction of the Common Interest Community, or the addition, annexation, or withdrawal of property to or from the Common Interest Community;
- (9) hazard or fidelity insurance requirements;
- (10) imposition of any additional restrictions on an Owner's leasing of Lots not otherwise set forth in this Declaration;
- (11) imposition of any restriction on an Owner's right to sell or transfer his or her Lot;
- (12) a decision by the Association, after the Association includes 25% of total Lots, to establish self-management if professional management has been required previously by this Declaration or the Articles of Incorporation or Bylaws of the Association, or by any Security Interest Holder of a First Security Interest;
- (13) restoration or repair of the Common Interest Community (after damage or partial condemnation) in a manner other than that specified in this Declaration, the Articles of Incorporation or Bylaws of the Association;

(14) any action to terminate the legal status of the Common Interest Community after substantial destruction or condemnation; provided, however, that termination of the legal status of the Common Interest Community for reasons other than substantial destruction or condemnation must be agreed to by at least sixty-seven percent (67%) of the Security Interest Holders holding First Security Interests (based on one (1) vote for each First Security Interest owned); or

(15) any provisions which are for the express benefit of Security Interest Holders of First Security Interests, or insurers or guarantors of First Security Interests.

2. Notice of Action. Upon written request to the Association, identifying the name and address of the Security Interest Holder of a First Security Interest or insurer or guarantor of the First Security Interest and the residence address of the property which is subject to such First Security Interest, each Security Interest Holder of a First Security Interest, or insurer or guarantor of a First Security Interest, shall be entitled to timely written notice of:

a. any condemnation loss or casualty Loss which affects a material portion of the Common Interest Community or any Lot subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor of a First Security Interest;

b. any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Security Interest held, insured or guaranteed by such Security interest Holder insurer or guarantor or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association if and when the Executive Board of the Association has actual knowledge of such default, and such delinquency or default remains uncured for a period of sixty (60) days;

c. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

d. any proposed action which would require the consent of a specified percentage of Security Interest Holders of First Security Interests as provided in this Article.

3. Financial Statements. The Association shall, within one hundred twenty (120) days after the Association's fiscal year end, prepare an annual accounting of association funds and a financial statement for the immediately preceding fiscal year, which shall be available for review by the Owners or any Security Interest Holder of a First Security Interest, or any insurer or guarantor of such First Security Interest, and which shall be delivered to such a requesting party upon written request therefor (accompanied by a postage prepaid return envelope) as soon as reasonably practicable following the Associations' receipt of such request. Upon not less than fifteen (15) business days' prior written notice to the Association, an Owner or Security Interest Holder shall have the right to conduct, at its sole cost and expense, an audit of the

Association's books and records for the preceding fiscal year, so long as the audit is (a) initiated not later than one hundred eighty (180) days following the Association's fiscal year end, and (b) conducted at the Association's business offices during ordinary business hours.

4. Agency Mortgages. The provisions of this Section 4 of Article VIII shall apply during any portion of time that a First Mortgage is held, insured, or guaranteed by any Agency:

a. Approval of Material Amendments. Notwithstanding anything in this Declaration to the contrary, in addition to the Member approval requirements set forth in Chapter Five, Section 6(a), any amendment to the Declaration of a material adverse nature to First Security Interest holders must be approved by First Security Interest holders that represent at least 51% of the Membership Interests of Lots that are subject to Mortgages. For purposes of this Section 4, an amendment to the Declaration shall be considered to be of a material adverse nature to First Security Interest holders if it is a Material Amendment.

b. Approval of Termination of Legal Status. Any action to terminate the legal status of the Property, whether after substantial destruction or condemnation, or for any other reason, must be approved by First Security Interest holders that represent at least 51% of the Membership Interests of Lots that are subject to Mortgages.

c. Notice; Implied Approval. A First Security Interest holder shall be deemed to have approved an amendment or termination of legal status if such First Security Interest holder fails to submit a response to any written proposal for an amendment or termination of legal status within sixty (60) days after it receives notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested. A First Security Interest holder shall be given notice at the address specified in such First Security Interest holder's written request for notice pursuant to Section 2 of this Article, or if no such written request has been submitted, to the most recent address as shown on the recorded deed of trust or assignment thereof.

### **CHAPTER THREE**

### **PROPERTY RIGHTS**

#### **ARTICLE I**

#### **USE OF COMMON ELEMENTS/EASEMENTS**

1. Use of Common Elements. An easement is hereby granted to the Declarant through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights.

a. No use shall be made of the Common Elements which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Elements.

b. No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Elements to all Members, nor shall any Owner place any structure whatsoever upon the Common Elements.

c. The use of the Common Elements shall be subject to such rules and regulations as may be adopted from time to time by the Declarant or the Executive Board.

d. No use shall ever be made of the Common Elements which will deny ingress or egress to those Owners having access to their Lots only over Common Elements, and the right of ingress and egress to said Lots is hereby expressly granted.

2. Easement for Encroachments. To the extent that any Improvement or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists. The easement does not relieve an Owner of liability in case of willful misconduct.

a. Declarant hereby reserves for itself, the Association and the Owners, easements for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the Plat and any amendments to such Plat or as established by any other instrument of record. In addition, there is hereby created a blanket easement upon, across, over and under the Common Interest Community for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, master television antenna systems, irrigation, and cable television. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Interest Community property and to affix, repair and maintain water, sewer and irrigation pipes, gas, electric, telephone and television wire, circuits, conduits and meters; provided, that (i) prior to constructing, installing or erecting any such facilities, the party desiring to do so shall first obtain a vertical and/or horizontal line assignment from Declarant or the Association identifying the location of the proposed utility installation; and (ii) the party desiring to construct, install or erect any utility facilities shall, upon completion of such installation, restore the surface of the property affected by such installation to its pre-construction condition. In the event any utility or quasi-municipal utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the conveyance by Declarant of the last Lot to the first purchaser thereof (other than Declarant), at which time said right and authority shall vest in the Association.

## ARTICLE II

### PROPERTY RIGHTS IN THE COMMON ELEMENTS

1. Owners' Easements. Subject to the provisions of Section 2 of this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to their Lots and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot, provided, however, that Tracts O, P, R and S, Red Rocks Valley Subdivision shall be maintained as private roads providing ingress and egress to the Lots contiguous thereto.

2. Extent of Owners' Easement. The rights and easements created hereby shall be subject to the following:

a. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Members casting at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant; and

b. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

c. The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking, signage and Improvements; and

d. The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Bylaws of the Association or the Association's rules and regulations; and

e. The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Common Interest Community shall not be deemed a transfer within the meaning of this subsection (e); and

f. The right of the Association, through its Executive Board, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, tenants, guests and invitees, for any purpose(s) the Executive Board may deem to be useful, beneficial or otherwise appropriate; and

g. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

3. Delegation of Use. Any Owner may delegate his rights of use of and access over the Common Elements to the members of his family, his tenants, or contract purchasers who reside on his Lot; provided, that such use shall be subject to all rules and regulations now or hereafter promulgated by Declarant or the Association.

4. Payment of Taxes or Insurance by Security Interest Holders of First Security Interests. Security Interest Holders of First Security Interests shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders of First Security Interests making any such payments shall be owed immediate reimbursement therefore from the Association.

5. Conveyance or Encumbrance of Common Elements.

a. Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only if Persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by a Declarant, agree to that action.

b. An agreement to convey Common Elements or subject them to a Security Interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner to a deed, by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Common Interest Community is situated and is effective only upon recordation.

c. The Association, on behalf of all Owners, may contract to convey an interest in the Common Interest Community pursuant to subsection (a) of this section, but the contract is not enforceable against the Association until approved and executed. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

d. Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale or other transfer of Common Elements is void.

e. A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Lot of its rights of ingress and egress to the Lot and support of the Lot.

f. A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

## **CHAPTER FOUR**

### **LAND USE RESTRICTIONS**

#### **ARTICLE I**

#### **GENERAL RESTRICTIONS**

It is the intention of Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots, all in order to enhance the value, desirability, and attractiveness of the Lots and serve and promote the sale thereof. This Common Interest Community and all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the provisions, conditions, limitations, restrictions, agreements and covenants of this Chapter 4, as well as those contained elsewhere in this Declaration.

1. Zoning Regulation. No real property within the Subdivision shall be occupied, used by, or for, any structure or purpose which is contrary to the zoning regulations of Mesa County, Colorado.

2. Signs. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot or any Common Elements other than a name plate of the occupant and a street number, and except for the standard "For Sale" sign approved by the Association. Standard "For Sale" signs shall be available from the Association for a deposit fee in an amount to be determined by the Association (which fee shall be refunded upon return of the sign to the Association) , and may include only two (2) telephone numbers of contact persons for information regarding the sale of a Lot; no names or other information may be included on such sign. No "For Lease" or "For Rent" signs, signs, posters or placards displayed in windows or otherwise visible from any portion of an Improvement, or other posters, billboards or other signs are permitted under any circumstances. Notwithstanding the foregoing, signs erected by governmental bodies or agencies and signs endorsing political candidates, ballot issues or similar election-related matters shall be permitted, so long as such signs are (i) not erected within public rights-of-way or any Common Elements, and (ii) are removed not later than five (5) days following the date of the applicable election or ballot initiative.

3. Animals. No animals, livestock, pigs, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep not more than two (2) dogs (not to exceed seventy-five (75) pounds in weight each) or a total of three (3), in the aggregate, domestic

animals including, without limitation, dogs, cats, or other domestic animals which are bona fide household pets. No pets may be kept for any commercial purpose, or in any manner as to create a nuisance to any resident of the Lots; all pets shall be kept in accordance with all rules and regulations relating to domestic animals as may be now or hereafter promulgated by Declarant or the Association, including leash requirements, removal of animal waste and similar restrictions. The Association shall also have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section 3, and to take such action or actions as it deems appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article IV hereof.

4. Restrictions on Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored, or allowed to accumulate on any property, except within an enclosed structure, with odors adequately controlled. Containers containing such materials shall not be placed outside the enclosed structure prior to the evening before scheduled trash pick-up and removal, and must be returned to the enclosed structure not later than the evening following such trash removal.

5. Off Street Parking. Owners shall not be permitted to park on the public streets or rights-of-way; short-term, temporary off-street parking by an Owner's guest shall be permitted so long as such off-street parking does not continue for more than twenty-four (24) hours.

6. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within any Lot and no odor shall be permitted from any Lot which is noxious or offensive to others, or which shall render the Lot or any portion thereof unsanitary, unsightly, or offensive from any public or private street or from any other Lot. No noise or other nuisance shall be permitted upon any portion of a Lot so as to be offensive or detrimental to the occupants of any other Lot. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horn, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any portion of the property without the approval of the Architectural Review Committee. As used herein, the term "nuisance" shall not include any activities of Declarant or Builders which are reasonably necessary to the development and construction of, and sales activities on, the Lots; provided, however that such activities of the Declarant and Builders shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, or with any Owner's ingress and egress to or from his Lot and a public way. Further, no unlawful use shall be permitted or made of any Lot or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lots, or any portion

thereof, shall be observed and all Improvements shall comply with all applicable federal, state and local laws, ordinances and regulations.

7. Residential Use Only. Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may use his Lot for professional or home occupation(s) subject to compliance with the Mesa County Zoning Regulations. Warehousing, storage for hire, fabrication, or commercial operations are prohibited. No Lot shall be improved or used except by a dwelling or structure designed to accommodate no more than a single family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-family residence.

8. Restriction on Subdividing. No Lot shall be subdivided, except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created thereby. Not less than one entire Lot, as conveyed, shall be used as a building site.

9. Lighting; Sound; Holiday Decorations. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying. Without limiting the generality of the foregoing, no exterior spotlights, search lights, speakers, horns, whistles, bells or other light or sound devices (other than security devices used exclusively for security purposes), shall be located or used on any property except with the prior written approval of the Architectural Review Committee. Only high-pressure sodium or incandescent bulbs shall be permitted in exterior lighting. All holiday or special event decorations, including lights, must be removed not later than two (2) weeks following such holiday or special event, weather permitting.

10. Easements and Utilities. Easements for installations and maintenance of utilities and drainage facilities are reserved as shown on the Plat, a separate recorded document per paragraph 2(a) of Article I, Chapter 3 hereof, or on the approved drainage study for the Subdivision on file in the Records or with the Association. All such facilities, including, without limitation, utility lines, electrical lines, water, gas and telephone lines within the boundaries of the Subdivision must be underground. Meters, lift stations, transformers and switch cabinets within the boundaries of the Subdivision may be above-ground. Within these easements, no structure, planting or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which the public authority or utility company is responsible.

11. Temporary and Accessory Structures. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot except as

permitted by the Architectural Review Committee and the applicable zoning or other governmental regulations. Notwithstanding the foregoing, during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures, including dumpsters, for storage of materials, tools or debris, as well as temporary fencing to protect the safety of persons and property, may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof, at which time any temporary structures and fencing placed or erected on a Lot in connection with such work shall be promptly removed. No permanent accessory structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot. Except as permitted by the Architectural Review Committee, any accessory structures located within the Common Interest Community must: (i) not exceed sixty-five (65) square feet in size; (ii) not exceed eight (8) feet in height above ground level; (iii) be set back ten (10) feet or more from the rear property line of the applicable Lot; and (iv) be constructed of the same materials and painted the same colors as the residence located upon such Lot.

12. Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.

13. Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, construction offices, dumpsters, construction signs, fences and other equipment, model Lots and sales offices and signs identifying the same, in such numbers, of such sizes and at such locations as it determines in its reasonable discretion. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Lots in such a way as to unreasonably interfere with the access of any Owner, his family members, guests or invitees of and to his Lot and to a public right-of-way.

14. Vehicular Parking, Storage and Repairs.

a. No recreational vehicles, including, without limitation, house trailers, campers, motor or mobile homes, camping trailers, boats or boat trailers, hauling or horse trailers, or equipment or accessories to any such recreational vehicles, or trucks (larger than one (1) ton, single-axle work trucks) may be parked or stored in the Subdivision or on the streets therein, unless such parking or storage is within the garage area of any Lot, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial, vehicles which are necessary for construction or for the maintenance of the Lots or any Improvements.

b. Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Common Interest Community or on any street or roadway within the Common Interest Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of three (3) weeks) or during a period of illness shall not be deemed to be abandoned.

c. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections (a) or (b) of this Section 8, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to cause the vehicle to be removed at the sole expense of the owner thereof.

d. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Common Interest Community, unless such activity is done within an enclosed structures which prevents the sight and sound of the activity from being seen or heard from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, together with those activities normally incident and necessary to such washing and polishing. No oil changing shall be permitted under any circumstances.

15. Miscellaneous Improvements.

a. No clothes lines, chain-linked dog runs or service yards shall be located on any Lot where such facilities are visible from the public streets. Firewood may be stored only in neatly stacked piles which are maintained in an orderly manner.

b. No types of exterior refrigerating, cooling or heating apparatus other than those originally installed by Declarant shall be permitted, except for ground mounted air conditioning units or ground mounted swamp coolers serving the principal residential structures on a Lot and are located in the back yard of the Lot and which are properly screened from view from adjacent Lots and Common Elements. Patio heating and insect repellent systems are permissible with the prior approval of the Association. No roof- or window-mounted swamp coolers or air conditioning units are permitted.

c. Satellite dishes are permitted on a Lot so long as such satellite dishes do not exceed one (1) meter in diameter, are mounted below the ridge line, are of a color consistent with the residence on the Lot or are otherwise camouflaged from view and comply with any criteria or requirements or design guidelines or similar document(s) which affect the Common Interest Community now or hereafter

promulgated, from time to time, by the Architectural Review Committee, the Executive Board. Regardless of size, all satellite dishes shall be screened from view as required by the rules of the Executive Board. Such criteria and requirements shall provide that the type of satellite dishes which are to be permitted and the installation thereof shall have the least amount of visibility reasonably possible. Further, except as may otherwise be permitted by the Architectural Review Committee, no exterior radio antenna, television antenna, microwave or satellite dish antenna, or audio or visual reception or transmission device or equipment of any type, shall be placed, erected or maintained on any Lot; provided, however, that any such devices may be erected or installed by the Declarant or a Builder during their sales or construction in the Common Interest Community.

d. No wind generators of any kind shall be constructed, erected or maintained in the Common Interest Community.

e. Window coverings must be installed not later than thirty (30) days following the date on which a residence on a Lot is first occupied, and must be of materials designed for window use and complimentary in color and style with the exterior of the residence.

16. No Hazardous Activities. No activities shall be conducted on any property or within Improvements constructed on any property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharge upon any property and no open fires shall be lighted or permitted on any property except in a contained barbeque while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

17. Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot; provided, that all leases shall be in writing and all leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association.

18. Landscaping. After acquisition of record title to a Lot by the first owner thereof (other than a Declarant, or a Builder), within six (6) months (as to front yard landscaping) and within one (1) year (as to rear yard landscaping), the Owner thereof shall install landscaping on his Lot not covered by a building or building Improvement as required by Mesa County regulations, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally correct watering, fertilizing, trimming, pruning, removal of weeds, and replacement of landscaping when necessary. Landscaping plans and other required documents shall be submitted to the Architectural Review Committee for approval and the approval of the same shall be

obtained prior to commencement of installation of landscaping, except where installed by Declarant. If any Owner fails to comply with this section, or with the requirements of the Architectural Review Committee in installation of landscaping, the Association may enter upon such Lot and install or maintain landscaping at the Owner's expense.

19. Maintenance of Grade and Drainage. Each Owner shall maintain the grading upon his Lot, and the Association shall maintain the grading upon the Common Elements, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. Each Owner and the Association agree, for themselves and their successor and assigns, that they will not in any way interfere with the established drainage pattern over any such real property, from adjoining or other real property, or with snow retention and removal in accordance with the approved drainage and maintenance plan for the Subdivision. In the event that it is necessary or desirable to change the established drainage over any Lot or other real property, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and Approval, in accordance with the provisions of this Chapter and shall obtain all necessary governmental approvals. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Lot is completed.

20. Shared Driveways. Lots 4, 5 and 6, Block 2; Lots 8 and 9, Block 2; and Lots 16 and 17, Block 2, Red Rocks Valley, shall be subject to a shared driveway easement over and across the areas depicted on Exhibit D attached hereto and by this reference incorporated herein.

21. Rules and Regulations. Rules and regulations concerning and governing the Lots and/or the Common Interest Community may be adopted, amended or repealed from time to time by the Declarant (during the Period of Declarant Control) or Executive Board, and the Declarant (during the Period of Declarant Control) or Executive Board may establish and enforce penalties for any infraction, non-compliance or other violation of any provision of this Declaration or of such rules and regulations, including, without limitation, the levying and collecting of fines or other penalties, the non-payment of which shall be treated in the same manner as non-payment of Association assessment liens as provided for in this Declaration or in the Association's Bylaws.

## ARTICLE II

### EXTERIOR APPEARANCE

1. The exteriors of all Lots must be consistent with the following guidelines:

a. Prior approval by the Architectural Review Committee shall be required for all exterior painting or staining, and shall be conditioned upon selection of a color from the approved color palette on record with the Architectural Review Committee from time to time. Lot Owners shall be responsible for the timely upkeep and maintenance of exterior surfaces.

b. Gas or oil drilling, or storage of gas, mechanical oil or other petroleum products in excess of reasonable quantities for normal household use are prohibited.

c. Mobile homes and dome style homes are prohibited.

d. All homes shall have a minimum two (2) car garage.

e. All Lots shall have a minimum 1,200 square feet of landscaped area between the front property lines and front of the residence in the front yard of the Lot. Minimal water consumption is encouraged in landscaping; not more than 3,000 square feet of bluegrass sod or its equivalent per Lot is permitted.

f. Any permanent outbuildings or accessory structures (other than those erected or installed by Declarant or a Builder) must be approved by the Architectural Review Committee prior to placement on any Lot.

g. Plans for permanent fencing (other than fencing erected or installed by Declarant) must be submitted to and approved by the Architectural Review Committee prior to installation.

(1) Privacy fences shall be permitted so long as such fences (i) are constructed of wood, (ii) do not exceed six (6) feet in height, and (iii) are set back from the front of the residence a minimum of five (5) feet. Chain link privacy fences are not permitted.

(2) Dog runs may be allowed with the prior approval of the Architectural Review Committee so long as such dog runs (i) are not visible from the front of the Lot, (ii) do not exceed eight hundred (800) square feet in area, (iii) do not exceed the height of any adjoining privacy fence, and (iv) do not exceed five (5) feet in height.

2. Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than six (6) inches beyond the required setback lines or Lot lines. This provision shall apply only to the original Improvements first constructed, erected or installed on a Lot and shall not be applicable to any alterations or repairs to, or replacements of, any such Improvements.

**ARTICLE III**  
**EXTERIOR MAINTENANCE**

1. General.

a. Maintenance, repair and replacement of all Common Elements, Improvements located thereon, and of any drainage structures or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Common Interest Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Further, the Association may provide such other maintenance and repair as the Executive Board deems appropriate from time to time, including without limitation, publicly-dedicated property and Improvements located thereon. The costs to be expended for such maintenance and repair shall, subject to Section 4 of this Article, be collected by the Association as Common Expenses pursuant to Article IV hereof.

b. The maintenance, repair and replacement of Improvements on a Lot, including, but not limited to the interior and exterior of the residence and other Improvements thereon, shall be the responsibility of the Owner of such Lot. The Association and each Owner, and their agents and contractors, are hereby granted an easement for the purpose of maintenance and repair of the Owner's Lot on, over, across, under and through any Lot (but not the interior of any residence located on a Lot) upon reasonable notice to the Owner thereof. Any damage occurring to such Lot or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance resulting in such damage.

2. Association's Right to Repair, Maintain, Restore and Demolish. In the event any Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in any manner as satisfactory to the Executive Board, the Association may, if said failure continues for a ten (10) day period after written notice to said Owners by the Executive Board, enter upon said Lot subsequent to the expiration of said ten (10) day period to perform any or all of such maintenance, repair or restoration or, pursuant to Article VII, Section 2 of Chapter Two hereof, to demolish a residence. The cost of such maintenance, repair, reconstruction and/or demolition shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to "assessments" as provided in Chapter Two, Article IV hereof, including, without limitation, interest, late charges and lien rights.

3. Access Easement. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner's Lot for maintenance, repair and replacement of any Common Elements and any other property or Improvements maintained, repaired or replaced by the Association to the extent such access is necessary and conducted in a reasonable manner. If damage is

inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot through which access is taken, the Owner responsible for the damage, or expense to avoid damage, or the Association, if it is responsible, is liable for the cost of prompt repair. Further, each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot, except that no such notice shall be required in connection with maintenance of any landscaping, walks, or other exterior non-intrusive maintenance, and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to such easements as provided for in this Section.

4. Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements or any improvements located thereon, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Chapter Two, Article IV of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or Invitee of ally Owner, and the amount of the Owner's liability therefore, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

5. Expenses for Property Subject to Development Rights. In addition to the liability that a Declarant as an Owner has under the Act, (i) Red Rocks Valley Real Estate Partners, LLC or its successor(s), as Declarant, alone is liable for all expenses in connection with the Annexable Property subject to Development Rights or Special Development Rights until expiration of all such rights with respect to such real estate, and (ii) Special Property Development Rights Holder, or its successor(s) alone is liable for all expenses in connection with the Expansion Property subject to Development Rights or Special Development Rights until the expiration of all such rights with respect to such real estate. No other Owner and no other portion of the Common Interest Community is subject to a claim for payment of those expenses. Any income or proceeds from real estate subject to Development Rights or Special Development Rights inures to the Declarant or the Special Development Rights Holder with regard to their respective real estate as set forth above.

## CHAPTER FIVE

### DECLARANT'S RIGHTS AND RESERVATIONS

1. Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth in this Chapter Five with respect to the Association and the Association Properties from the date hereof, until the date which is twenty (20) years following the recordation of the Declaration. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Interest Community is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provision of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment. Declarant makes no assurances that Declarant will exercise the rights reserved by Declarant herein with respect to all or any portion of the Common Interest Community and Declarant reserves the right to exercise such rights with respect to the Common Interest Community in such time frames and in such a manner as Declarant deems fit in its sole and absolute discretion.

2. Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but not the obligation, to construct additional Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners. Declarant shall convey or transfer such Improvements to the Association, and the Association shall be obligated to accept title to, care for, and maintain the same as Association Properties.

3. Declarant's Rights to Use Association Properties in the Promotion and Marketing of Common Interest Community. Declarant shall have and hereby reserves the right to use Association Properties and services offered by the Association in connection with the promotion and marketing of the Common Interest Community. Without limiting the generality of the foregoing, Declarant may: (a) erect buildings and other structures on the Association Properties, as Declarant reasonably may deem necessary, in connection with the promotion, development, and marketing of real property within the Common Interest Community; (b) use vehicles and equipment on Association Properties for promotional purposes; (c) permit prospective purchasers of Lots to use Association Properties at reasonable times and in reasonable numbers; (d) maintain sales offices, management offices, and model homes, on the Association Properties or the Lots owned by Declarant within the Common Interest Community in such sizes and in such locations as individually determined by Declarant, in its sole and absolute discretion; and (e) refer to the Association Properties and to the Association and services offered by the Association in connection with the development, promotion and marketing of property within the boundaries of the Common Interest Community. Notwithstanding the foregoing to the contrary, any use of the Association Properties for

the above purposes shall be done so as to minimize any inconvenience to the Owners of Lots and Members of the Association.

4. Declarant's Rights to Complete Development of Common Interest Community. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to: (a) complete the development of the property within the boundaries of the Common Interest Community; (b) construct or alter Improvements on any property owned by Declarant within the Common Interest Community, including temporary buildings; (c) maintain model homes, sales offices, management offices, temporary buildings or offices for construction or sales purposes, or similar facilities upon any property owned by Declarant or owned by the Association within the Common Interest Community upon such Lots and in such sizes as Declarant determines in its sole and absolute discretion; or (d) post signs incidental to the development, construction, promotion, marketing or sales of property within the Common Interest Community. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to: (a) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any Improvements on any property owned by Declarant; or (b) use any structure on any property owned by Declarant as a construction, model home or real estate sales office in connection with the sale of any property within the boundaries of the Common Interest Community.

5. Declarant's Approval of Conveyances or Changes in Use of Association Properties. Until Declarant has lost the right to appoint members of the Board of Directors as elsewhere provided herein, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Association Properties, Mortgage the Association Properties or use Association Properties other than solely for the benefit of the Members or as specifically allowed hereunder.

6. Declarant's Rights to Grant and Create Easements. Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, and water in, on, under, over and across Lots owned by Declarant and Association Properties for any purpose incidental to the development and sale of Lots within the Common Interest Community.

7. Declarant's Rights to Convey Additional Property to Association. Declarant shall have and hereby reserves the right, but not the obligation, for a period of twenty (20) years from the date of the recording of this Declaration, to convey additional real property and Improvements thereon to the Association at any time and from time to time in accordance with this Declaration.

8. Annexation of Additional Properties. Declarant hereby reserves the right, for a period of twenty (20) years from the date of the recording of this Declaration, to create additional Lots and to annex the Annexable Property or the Expansion Property to the Common Interest Community, in phases, in accordance with the following terms and provisions:

a. Special Development Rights Holder and its successors shall have the option, in its sole discretion, to cause Declarant to annex the Expansion Property to the Association within twenty (20) years from the date of the recording of this Declaration, provided that Special Development Rights Holder provides Declarant written notice of Special Declarant Right Holder's election to cause Declarant to annex the Expansion Property on or before one hundred and twenty (120) days prior to the expiration of twenty (20) years from the date of the recording of the Declaration. Upon annexation of the Expansion Property to the Association in accordance with the procedures for annexation of additional Lots as more specifically described below (i) the Expansion Property shall be subject to these Declarations, and (ii) Special Development Rights Holder and its successors shall be vested automatically with the following special development rights which shall apply to the real property and Improvements within the boundaries of the Expansion Property only:

(1) Use of common elements of the Expansion Property as described in Chapter Three, Article I, Sections 1 and 2 of these Declarations;

(2) Maintenance of facilities reasonably necessary and incidental to the development and construction of Improvements on the Expansion Property as described in Chapter Four, Article I, Section 13 of these Declarations;

(3) With respect to the Expansion Property only, rights reserved in this Chapter Five, Sections 2, 3, 4 and 6.

Notwithstanding the foregoing, Special Development Rights Holder shall not have any rights to create more than 59 additional Lots within the Expansion Property or to annex any real property to the Expansion Property or the Association other than those Lots described on Exhibit C. In the event Special Development Rights Holder creates additional Lots within the Expansion Property or annexes any additional real property to the Expansion Property not described in Exhibit C prior to annexation of the Expansion Property to the Association as contemplated by Section 8.a. of this Article, Declarant shall be relieved of its obligation to annex the Expansion Property to the Association.

b. Upon annexation of the Expansion Property to the Association, the Association shall accept title to all Common Elements, including Improvements thereon, as well as personal property, equipment, and easements, if any, within the boundaries of the Expansion Property transferred to the Association by the Special Development Rights Holder, together with the responsibility to perform all duties and functions of the Association that are set forth in this Declaration.

9. Right to Annex Additional Property. With the consent of the Special Development Rights Holder or other Person who owns such property, if applicable, Declarant shall have and hereby reserves the right for a period of twenty (20) years from the date of the recording of this Declaration to annex the Annexable Property and/or the Expansion Property to the Common Interest Community and to subject the Annexable Property and/or the Expansion Property to the provisions of the Declaration, subject to, if required, a determination by HUD or VA that the annexation is in accord

with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed). Each such annexation shall be effected, if at all, by one of the following:

a. recording a deed, with the Clerk and Recorder of the County of Mesa, Colorado, from the Declarant, any Builder or Special Development Rights Holder that provides for conveyance of a portion of the property described in the attached **Exhibit B** or the Expansion Property to any Person other than the Declarant, a Builder, or Special Development Rights Holder, in which case each such lot in the property so conveyed shall constitute a Lot and the Allocated Interests shall thereupon automatically be reallocated to be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots then within the Common Interest Community upon recording of such deed, or

b. the filing of record, with the Clerk and Recorder of the County of Mesa, Colorado, a Supplemental Declaration, containing a legal description of the Lots within the Annexable Property and/or Expansion Property to be annexed to the Common Interest Community, a reallocation of the Allocated Interests to be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots then within the Common Interest Community upon recording of such Supplemental Declaration, and may include such other provisions as Declarant may prescribe in accordance with the terms and provisions hereof; and, if applicable, a Supplemental Map or map which depicts the Annexable Property and/or Expansion Property, and the Lots therein, to be annexed to the Common Interest Community, and which otherwise contains all information required by the Act. The Supplemental Declaration shall incorporate the covenants, conditions and restrictions set forth herein and contain such additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions as Declarant may impose on such annexed property taking into account the unique and particular aspects of the proposed development of the real property encumbered by such Supplemental Declaration. Declarant shall have the right to reserve in a Supplemental Declaration any and all development rights which Declarant deems necessary or appropriate to complete the development of the property being annexed to the Common Interest Community or which is otherwise necessary to meet the unique and particular aspects of such property. In addition to the foregoing, the Declarant may amend this Declaration at any time during the twenty (20) year period noted hereinabove, in order to add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Common Interest Community pursuant to this sentence, and not described in the attached Exhibit B or Exhibit C does not exceed ten percent (10%) of the total collective area described in the attached Exhibit A, Exhibit B and Exhibit C. Declarant makes no assurances that all or any portion of the Annexable Property or the Expansion Property will be annexed to the Common Interest Community and made subject to the provisions in the Declaration and Declarant reserves the right to annex all or any portion of the Annexable Property or the Expansion Property to the Community in such order and in such a manner as Declarant deems fit in its sole and absolute discretion.

10. Effect of Expansion. Upon recordation of a deed as described in Section 9(b)(i) above, or a Supplemental Declaration and a Supplemental Map as described in Section 9(b)(ii), if applicable, the property described therein shall be subject immediately to all covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration. In the event any Annexable Property or any Expansion Property is annexed to the Common Interest Community as provided herein, the definitions used in the Declaration shall automatically be expanded to encompass and refer to the Common Interest Community as expanded. Upon recordation of a Supplemental Declaration and Supplemental Map, if applicable, every Owner of a Lot in such annexed area shall, by virtue of ownership of such Lot, be a member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association Member, which rights and obligation shall include but shall not be limited to, the right to vote in Association matters, the right to use Association Properties and the obligation to pay Assessments. Except as may otherwise be provided herein, upon the annexation of any property to the Common Interest Community, each Owner's: (a) undivided interest in the Association Properties; and (b) voting rights with respect to Association matters shall be reallocated to provide that each Owner's proportionate rights with respect to such matters will be equal to a fraction the numerator of which shall be the number of Lots owned by such Member in the Common Interest Community and the denominator of which shall be the total number of Lots within the Common Interest Community.

11. Withdrawal of Annexed Property. Property for which a Supplemental Declaration has been recorded may be withdrawn from the Common Interest Community by Declarant at any time prior to the time that any Lot contained therein has been conveyed to a third party. Such withdrawal may be accomplished by the execution, acknowledgment, and recordation of a "Notice of Withdrawal." The Notice of Withdrawal shall: (a) be executed and acknowledged by Declarant, as the Owner of the Common Interest Community; (b) contain an adequate legal description of the property being withdrawn from the Common Interest Community; (c) contain a reference to the Supplemental Declaration by which such property was annexed to the Common Interest Community including the date thereof and recording information of such Supplemental Declaration; (d) contain a statement and declaration that such property is withdrawn from the Common Interest Community and shall not be thereafter subject to this Declaration or the Supplemental Declaration for such property. The withdrawal of such property from the Common Interest Community shall be effective upon the recordation of the Notice of Withdrawal and upon the recordation of the Notice of Withdrawal, the property described therein shall no longer be part of the Common Interest Community or subject to this Declaration or Supplemental Declaration for such property.

12. Expansion of Permitted Property Uses. Notwithstanding anything to the contrary contained herein, Declarant reserves the right to expand the permitted uses for Lots provided that such uses: (a) are consistent with Declarant's overall development plan for the Common Interest Community; and (b) are in accordance with City of Grand Junction rules, regulations, requirements and approvals.

13. Special Declarant Rights. In addition to the foregoing reserved rights, Declarant further reserves the right to exercise all Development Rights and Special Declarant's Rights permitted by the Act, as those terms are defined in the Act.

## CHAPTER SIX

### GENERAL PROVISIONS

1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration the Articles of Incorporation, the Bylaws or rules and regulations of the Association, as amended, may be by any proceeding at law or in equity against any person or persons (including, without limitation, the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. In the event of a dispute between the Association and Lot Owners, either party may institute an action in a court of competent jurisdiction located in the State of Colorado. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability. All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidity of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

3. Conflict of Provisions. Except to the extent that any provision of this Declaration is inconsistent with the Act, in case of any conflict between this Declaration, the Articles of Incorporation, Bylaws of the Association or the Prior Declaration, this Declaration shall control. In case of any Conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

4. Conflict with Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In spite of any such conflict or inconsistency, all terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration but the same shall be in full force and effect in accordance with its terms.

5. Duration Revocation, and Amendment.

a. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided in subsection (d) of this Section 5 or in Section 4 of this Article, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by a vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The Covenant set forth in subparagraph a. of Paragraph 8. of Chapter Five may be amended only with the written consent of the Special Development Rights Holder or its successors as owner of the Expansion Property.

b. No action to challenge the validity of an amendment adopted by the Association pursuant to this section may be brought more than one (1) year after the amendment is recorded.

c. Every amendment to the Declaration must be recorded in every county in which any portion of the Common Interest Community is located, and is effective only upon recordation.

d. Except to the extent expressly permitted or required by other provisions of this Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Lots, change the boundaries of any Lot or the Allocated Interests of a Lot, or the uses to which any Lot is restricted, in the absence of unanimous consent of the owners.

e. Amendments to the Declaration that are required by this Declarant to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

6. Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail postage prepaid, return receipt requested, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Executive Board or the Association shall be sent by registered or certified mail, postage prepaid, Red Rocks Real Estate Partners, LLC, c/o The Pauls Corporation, 270 St. Paul Street, Suite 300, Denver, Colorado 80206, until such address is changed by the Association.

7. Description of Lots. It shall not be necessary to use the term "Lot" as a part of a legally sufficient description of a Lot.

8. Termination of Common Interest Community. The Common Interest Community may be terminated only in accordance with the provisions of the Act and with the approvals, if applicable, as provided in this Declaration.

9. Transfer of Special Declarant Rights. A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Common Interest Community is located, and in accordance with the Act.

10. Eminent Domain. The taking by eminent domain of a Lot(s) or Common Element(s), or any portion thereof, shall be done in accordance with applicable law, including without limitation the Act.

11. Association as Trustee. With respect to a third Person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third Person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third Person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the power it purports to exercise. A third Person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

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Signature page to

Amended and Restated Master Declaration of Covenants, Conditions and Restrictions  
for Red Rocks Valley Homeowners Association, Inc., a Colorado non-profit corporation

DECLARANT:

RED ROCKS REAL ESTATE PARTNERS, LLC,  
a Colorado limited liability company

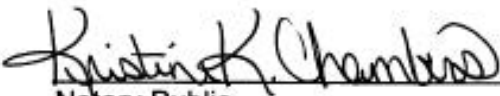
By: SAINT MATTHEW CHARITABLE FOUNDATION  
Its Sole Member and Manager

By:   
Chris Manley  
Authorized Signatory

STATE OF COLORADO            )  
  )        ss.  
CITY & COUNTY OF DENVER    )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of  
September, 2012 by Chris Manley, the Authorized Signatory of Saint Matthew  
Charitable Foundation, the sole member of Red Rocks Real Estate Partners, LLC.

Witness my hand and official seal.

  
Notary Public

My Commission expires: 12/11/2013



**EXHIBIT A**

Legal Description

LOTS 1 THROUGH 6, INCLUSIVE, IN BLOCK 1;  
LOTS 6 THROUGH 9, INCLUSIVE, IN BLOCK 3;  
LOTS 1 THOUGH 10, INCLUSIVE, IN BLOCK 4;  
TRACT J

ALL IN RED ROCKS VALLEY, COUNTY OF MESA  
STATE OF COLORADO

**EXHIBIT B**

Legal Description

LOTS 1 THROUGH 17, INCLUSIVE, IN BLOCK 2;  
LOTS 1 THROUGH 5, INCLUSIVE, IN BLOCK 3;  
LOTS 1 THROUGH 52, INCLUSIVE, IN BLOCK 5; AND  
LOTS 1 THROUGH 4, INCLUSIVE, IN BLOCK 6;

ALL IN RED ROCKS VALLEY, COUNTY OF MESA  
STATE OF COLORADO

**EXHIBIT C**

Legal description

Tract N;

Lot AA in Block 2;

Lot BB in Block 2;

Lot CC in Block 6;

Block 7, all in Red Rocks Valley Subdivision

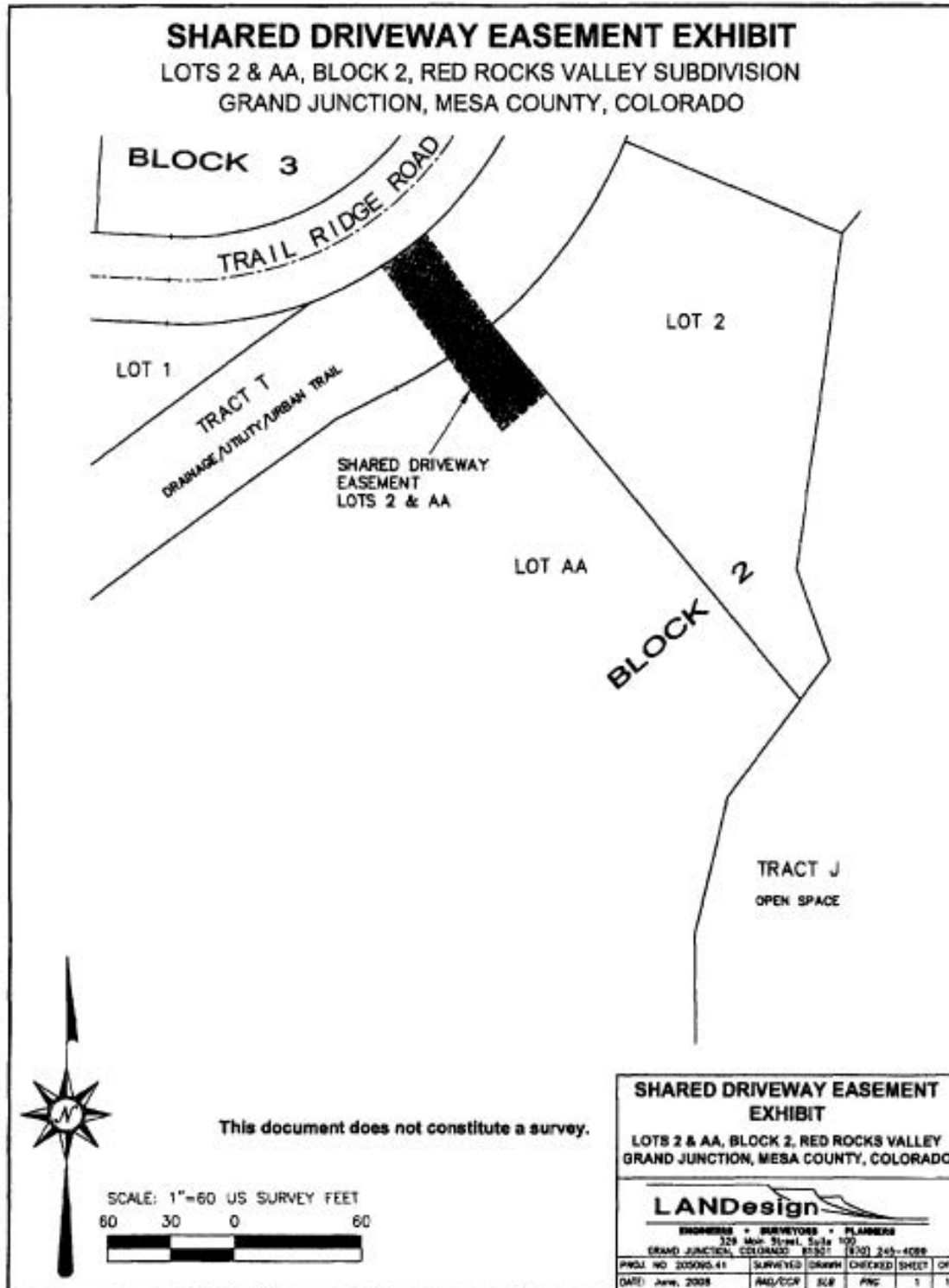
County of Mesa

State of Colorado

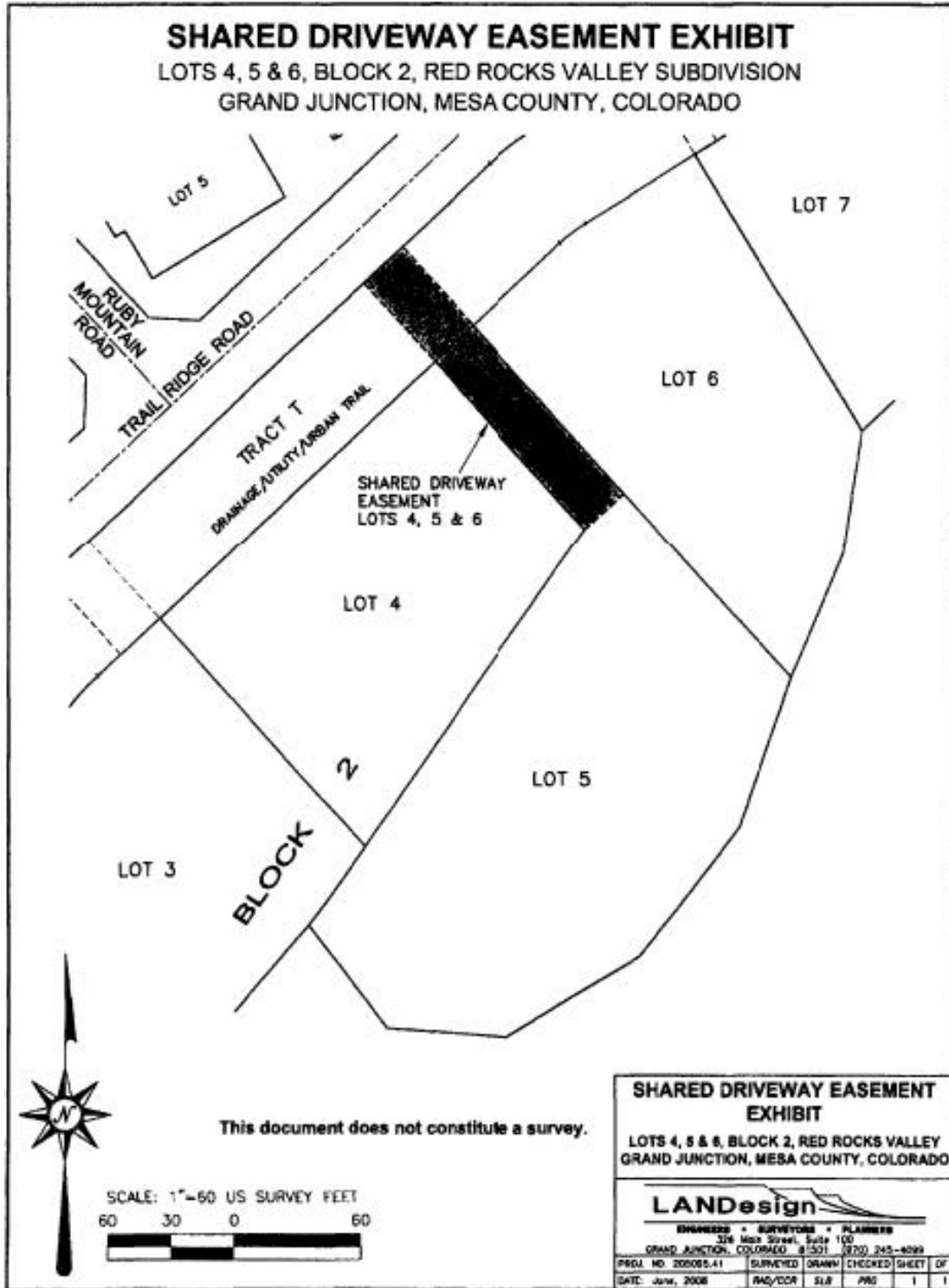
**EXHIBIT D**

**Shared Driveway Easement**

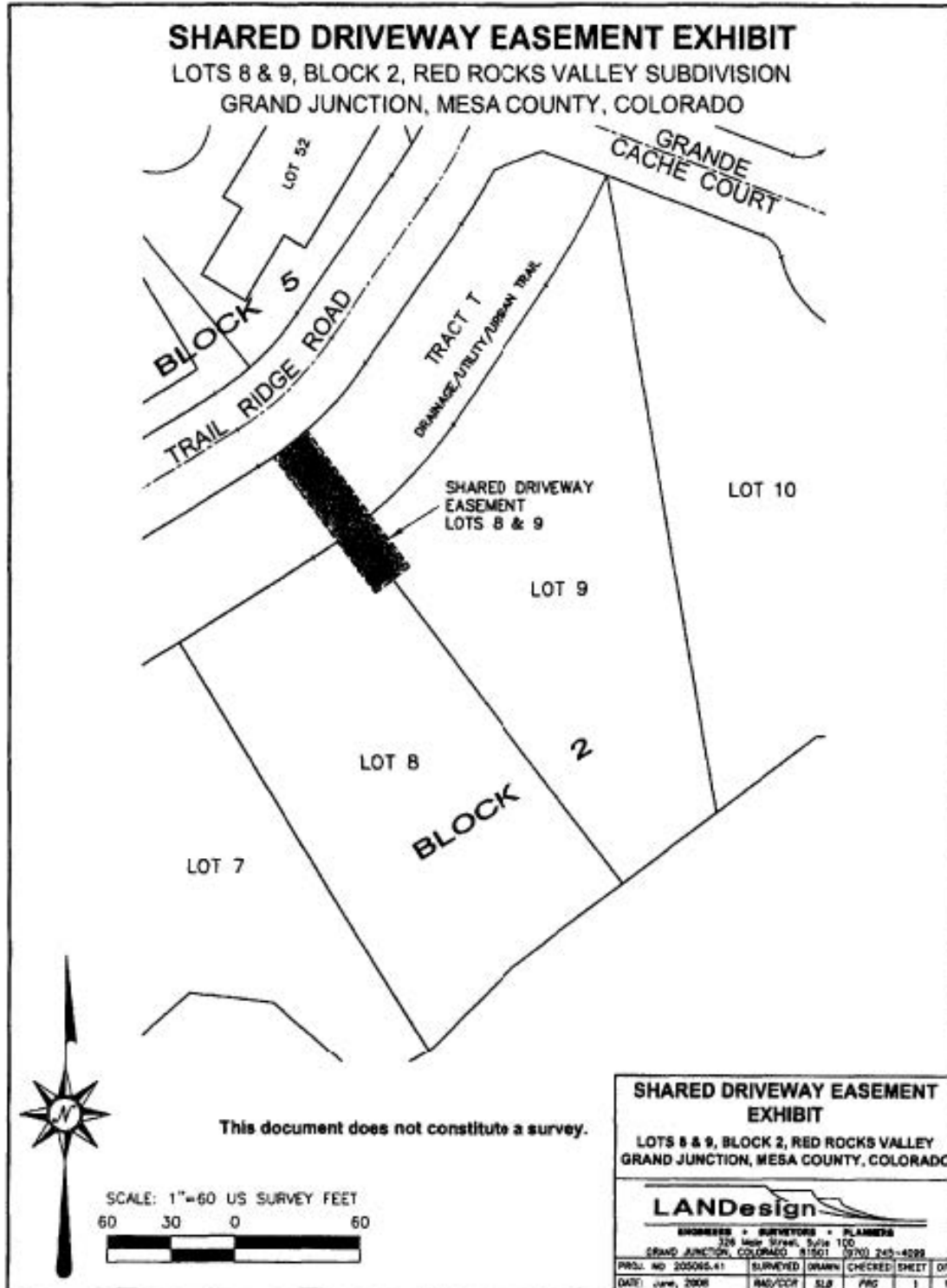
RECEPTION #: 2461312, BK 4739 PG 365 10/10/2008 at 04:44:14 PM, 45 OF 48, R \$240.00 S \$1.00 Doc Code: COVENANTS Janice Rich, Mesa County, CO CLERK AND RECORDER



RECEPTION #: 2461312, BK 4739 PG 365 10/10/2008 at 04:44:14 PM, 46 OF 48, R  
\$240.00 S \$1.00 Doc Code: COVENANTS Janice Rich, Mesa County, CO CLERK AND  
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