

DECLARATION
of
COVENANTS, CONDITIONS, RESTRICTIONS,
RESERVATIONS AND EASEMENTS
FOR
RIVER PARK RIDGWAY BUSINESS PARK, FILING NO. 2
Town of Ridgway, Ouray County, Colorado

DECLARATION OF RIVER PARK FILING II (the "Declaration") made this 27th day of SEP 2005 by NORTHSIDE RIDGWAY, LLC, a Colorado limited liability company, P.O. Box 381, Ridgway, CO 81432, as the "Declarant," pursuant to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time (the "Act").

RECITALS

A. Declarant owns real property in the Town of Ridgway, Ouray County, Colorado, which has been approved for development and subdivision by the Town of Ridgway under the name "River Park II." This Declaration intends to establish River Park II as a common interest planned community to foster the orderly and uniform development of River Park II by Declarant. The covenants, conditions and restrictions contained in this Declaration intend to protect, in perpetuity, the health, safety and property values within River Park II and to promote Declarant's planned development and marketing of River Park II. This Declaration establishes important standards, rights, obligations and restrictions relative to owning real property within River Park II.

B. Nothing herein binds the Town of Ridgway or will be enforced by the Town of Ridgway. The Town of Ridgway will enforce its ordinances, regulations, conditions of the approved planned unit development (P.U.D.), Plats, and Development Agreements as such may be amended from time to time, regardless of anything to the contrary herein.

NOW THEREFORE, in consideration of the above Recitals, the Declarant states as follows for this Declaration:

ARTICLE I.
SUBMISSION OF REAL PROPERTY

1.1 Declaration and Submission. Declarant hereby submits the real estate legally described in Exhibit "A," together with such additional real estate as may be subsequently added, pursuant to the expansion rights, development rights and special Declarant rights reserved herein, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon, to the provisions of the Act. Declarant further hereby declares that the real property defined below as River Park II, and any property added by expansion, shall be acquired, owned, held, transferred, sold, maintained, used and occupied subject to this Declaration and all covenants, conditions, restrictions, rights, notices, exceptions, reservations, development rights, easements, obligations, assessment obligations, encumbrances and other provisions stated in this Declaration, as may be amended and supplemented from time to time. This Declaration applies to any improvements constructed within River Park II.

1.2 River Park II. "River Park II" is a collective term that shall (i) be the name of the Planned Community created by this Declaration and (ii) describe the real property submitted hereby and the Lots and tracts described specifically on that certain plat map recorded in the Office of the Ouray County Clerk and Recorder at Reception No. 189380, together with such additional property

which may be added by Declarant or others. Reference to "River Park II Plat" in this Declaration shall mean this plat map, as amended and supplemented.

(a) River Park II Plat. The River Park II Plat (The Plat) is incorporated into this Declaration by this reference as though fully set forth. The Plat shall contain and depict further rights, restrictions, easements, variances, development rights, special Declarant rights and other reservations important to all aspects of River Park II. The Plat also sets forth identifying numbers for each Lot. It also reserves and creates, among other things, the boundaries and configuration of the Lots, building setback lines, no building zones, measurements, dimensions and location of the Lots, improvements located or to be located on the Lots, pipeline easements, parking areas, common and/or public roads, open space tracts, common elements, limited common elements, utility easements, alleys, pedestrian easements, sidewalks, bike paths and irrigation ditches, water courses, surface drainage easements and other encumbrances and notices.

(b) Legal Nature of River Park II. River Park II is "Planned Community" type of Common Ownership Community. River Park II has also been zoned, subdivided, accepted and approved by the Town of Ridgway as a "planned unit development" and as a "site specific development plan" pursuant to the Town of Ridgway Land Use Code §§ 7-3-11, 7-4-1, *et seq.* and 7-5-1, *et seq.* Such approvals establish vested property rights in favor of Declarant.

(c) Development of River Park II/Maximum Lots. River Park II is a phased development subject to that certain P.U.D. Development Agreement recorded at Reception No. 174439 of the Ouray County Clerk & Recorder. Filing II contains 32 units of residential density. As specified in Article 8 herein below, Declarant shall also have the right to add units and to add real property to River Park II provided that the number of Lots or units added or created does not exceed a maximum of 150 residential units and 50 commercial/light industrial units. This maximum shall not be deemed to impair any right herein to add unspecified units if allowed by law.

(d) Identification of Lots. Pursuant to C.R.S. § 38-33-204, every contract for sale, deed, written conveyance, lease, First Lien Security Interest, encumbrance, will or other legal instrument shall legally describe a Lot within River Park II as follows:

Lot _____, River Park, Filing No. 2, according to and subject to that certain Real Property Declaration and Plat Map recorded in the Office of Ouray County Clerk and Recorder at Reception No. _____ and Reception No. _____, respectively, Town of Ridgway, Ouray County, Colorado.

(e) Affordable Housing Restriction. The title to certain Lots will contain restrictive language to facilitate affordability for qualified candidates. The restricted lots - Series 400 Lots - shall be designated as such on the River Park II Plat and shall be owned, used and conveyed subject to the restriction.

(f) Common Open Space. Those portions of real property designated as "Open Space" or Tracts with an "OS" suffix or labeled as "Beautification" easements on the River Park II Plat shall be dedicated, granted, conveyed and maintained by the Association for the benefit of all Lot Owners within River Park II and shall be useable by the public as a Common Element, except Tract OS-6 which shall not be open to the public and shall be limited common elements. Such property may be dedicated to the Town with the consent of and on the terms required by the Association and accepted by the Town of Ridgway. In no event shall such property be used for any purpose other than open space or sub-surface utilities, and an express open space use deed restriction, equitable servitude and covenant is hereby placed on such Tracts. All streets, alleys, roads, sub-surface utility

easements, drainage easements and the Railroad Street drainage easement and sewer easement shown on the River Park II Plat along with a sub-surface utility easement on tracts OS-2, OS-6, and OS-7, are dedicated, granted and conveyed to the Town of Ridgway, Colorado, for the Town and public utility, drainage and related purposes, including but not limited to water, sewer, storm sewer, electrical, telephone, gas and CATV lines, together with a perpetual right of ingress for installation, maintenance and replacement of such lines. Park-type improvements and other minor park accessory structures may be erected upon open space tracts space (such as benches, playground equipment, gazebos).

(g) Easements and Reversions. Declarant hereby reserves, creates and discloses the following easements, notices and rights relative to River Park II, which may also be depicted on the River Park II Plat:

(i) *Underground Sewer Easement.* An underground sewer easement for the benefit of Lot C-3, Eagle Hill Ranch, according to that certain Agreement Between Adjoining Landowners For Easements and Membership dated July 31, 1997.. .

(ii) *Easement for Surface Water Drainage and Ditches.* Declarant hereby declares, reserves and creates a perpetual easement over, under and across the setback area of each and every Lot, all common elements, limited common elements in River Park II for the maintenance of ditches, utility infrastructure, waterways, headgates and water pipelines for the benefit of Declarant (the "Water Easement"). The Water Easement shall include the right to enter upon any Lot within River Park II with men and equipment upon reasonable notice and times for the purpose of repairing, maintaining, improving, or otherwise modifying the water drainage and ditch system. Any entry upon a lot for the purpose of maintaining or working on the water drainage and ditch system shall not constitute a trespass or breach of the covenant of quiet enjoyment.

(iii) *Temporary Turnaround Easements.* Temporary Turnaround easements, as may be depicted on the River Park II Plat, shall be a temporary, non-exclusive easement for general ingress and egress to benefit all public traffic including, but not limited to, law enforcement, fire protection, ambulance and other service vehicles now or hereafter serving River Park II. Such easement shall automatically terminate and be of no further benefit if and when a public thoroughfare is connected and installed for better circulation.

(h) Titles and Taxation. Each Lot shall constitute for all purposes a separate parcel of real property and shall be separately assessed and taxed by applicable governmental taxing authorities. Any lien for delinquent taxes shall be confined to the particular Lot involved and shall not affect title to any other Lot.

(i) Soils/Geological Hazards. A Soils/Geological Hazard Study has been completed by Lambert & Associates, P.O. Box 0045, Montrose, CO 81402 in the form of a written report dated July 7, 2004 and August 7, 2004. Such reports disclose the potential for radon gas on the Lots as well as soils with varying soil and engineering characteristics. Such characteristics include swell potential, settlement potential, bearing capacity and the bearing conditions of the soils' ability to support foundations. Each Lot Owner shall be responsible for addressing radon gas and for investigating and determining the feasibility of the particular soils and the engineering characteristics for each lot.

**ARTICLE II.
DEFINITIONS**

2.1 **General.** Each capitalized term or term of special applicability used in this Declaration or used in the River Park II Plat shall have the meaning specified or used in the Act, unless otherwise defined or used in this Declaration.

(a) Act or CCOIA. The Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time.

(b) Articles of Incorporation or Articles. The Articles of Incorporation for River Park II Owners Association, a Colorado nonprofit corporation, as may be amended from time to time.

(c) Association. The River Park II Owners Association, a Colorado nonprofit corporation, its successors and assigns.

(d) Bylaws. The Bylaws adopted by the Association pursuant to C.R.S. § 38-33.3-306.

(e) Common Elements and General Common Elements. Means the Real Estate within River Park II owned by the Association, other than a Lot; which real property is designated in the plat map to be recorded for River Park II as a "C.E." or "G.C.E."

(f) Common Expenses. As used in this Declaration, this term includes assessment charges levied by and for the benefit of the Association, pursuant to the Governing Documents, including, but not limited to: (i) annual costs and expenses of the Association; (ii) large single-item expenditures of the Association (including but not limited to, capital expenditures, open space acquisitions and "Special Assessments"); (iii) amounts necessary to fund reserves pursuant to this Declaration; (iv) amounts for trash services; and (v) amounts for irrigation and landscaping water charges and leases.

(g) Common Expenses Assessment(s); Assessment(s). In addition to the definition included in the Act, shall include, but not be limited to, the following items levied against a particular Owner and/or Lot for the purposes of promoting the health, safety, and welfare of River Park II and to enforce this Declaration and to construct improvements and acquire additional open space tracts: (i) late charges, attorneys' fees, fines, and interest; (ii) charges against a particular Owner and the Lot for the purposes of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Governing Documents by the Owner (including "default assessments"); and (iii) utility assessments and insurance assessments (assessed in proportion to risk).

(h) Declarant. Declarant means the Declarant named in this Declaration, and any successor and/or assignee designated by Declarant.

(i) Declaration. Collective reference to this Declaration and all the covenants, conditions, restrictions, limitations, reservations assessments, charges, lines, easements, and other provisions set forth in herein as may be amended or supplemented.

(j) Design Guidelines. Collective reference to all written design and development guidelines, policies and procedures, building standards and material specifications, application and review procedures and fee schedules, and all architectural controls that apply to all construction and the placement, installation or removal of Improvements within River Park II and which are enacted by the Executive Board, its authorized delegates, and the DRB pursuant to their rule-making authority.

(k) Design Review Board/DRB. The committee created by Declarant for the purpose of administering and establishing controls over River Park II to ensure the desired development, design, use and improvement of River Park II.

(l) Executive Board or Board of Directors. The governing body of the Association which is designated hereby and in the Articles and Bylaws.

(m) First Lien Security Interest. Any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Ouray, Colorado, having priority of record over all other recorded liens except those governmental liens and Common Expense Assessment liens made superior by statute.

(n) Governing Documents. Collective reference to those written documents which govern the operation of the Association and River Park II, including: (i) its Articles of Incorporation; (ii) its Bylaws; (iii) its Rules and Regulations; (iv) River Park II Plat and P.U.D. Development Agreement; (v) Design Guidelines; and (vi) this Declaration, as one or more of the same may be amended from time to time. Each and every provision of the Governing Documents shall be given the force and effect as if set forth in this Declaration, which document shall control in the event of any conflict.

(o) Improvement(s). Without limit, includes structures, fencing, landscaping, signs, vegetation, utilities, roads, driveways and buildings within or upon a Lot, including any substantial change, removal or addition to any structure or attachment.

(p) Limited Common Element. Those portions of the Common Elements, if any, designated by Declarant or the Association for the exclusive use of one or more but fewer than all of the Lots. Such tracts shall be designated as "L.C.E." on the River Park II Plat.

(q) Lot(s). A general term to describe any unit, parcel, tract or other physical portion of property within River Park II designated for separate ownership or use as shown on the River Park II Plat with separate boundaries, including any Improvements erected or to be erected thereon. Lot shall also be deemed to include a separate unit that is part of a duplex, triplex or other shared-lot structure. As used herein, "Lot" shall also mean a unit as that term is defined in the Act. Lot shall also mean any property or units that are added to River Park II pursuant to Declarant rights or otherwise.

(r) Notice of Violation. An instrument which shall set forth the name of the owner of record, the nature of the covenant violation and covenant violated, the approximate dates of violation and containing provisions for the signature of the DRB or the Association.

(s) Owner or Lot Owner. The Declarant, or any other person or entity that owns, acquires, accepts, purchases or otherwise acquires a Lot in River Park II. Lot Owner shall be a similar term to Unit Owner as defined in the Act.

(t) Purchaser. A person, other than a Declarant or an assignee of Declarant and its special Declarant rights, development rights and other reserved rights, who by means of a transfer acquires a legal or equitable interest in a Lot.

(u) Rules and Regulations. Collective term for all rules, regulations, policies, procedures and guidelines of the Association, in general, and including the Design Guidelines, specifically as the same may be adopted and amended from time to time by the Executive Board or the DRB pursuant to the Act, this Declaration and Bylaws.

ARTICLE III.
RIVER PARK II OWNERS ASSOCIATION

3.1 Formation and Purpose. "River Park II Owners Association" is the name of the owner association formed pursuant to C.R.S. § 38-33.3-301. River Park II Owners Association is a Colorado nonprofit corporation formed by filing Articles of Incorporation with the Colorado Secretary of State. The Association, through its Executive Board, shall perform certain functions and hold and manage certain property within River Park II for the common benefit of the Association Members. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the common elements, open space tracts, parks, drainage systems, waterways, ditches and natural trail systems to the extent not provided by the Town of Ridgway. The Association shall also have the authority and full power to negotiate with the Town of Ridgway to require its participation in the cost of maintaining areas within River Park II. The Association may arrange for comprehensive trash collection services to be paid by the Owners as an assessment as provided herein. The Association shall maintain the trees and landscaping within the "OS" Tracts. And strips located within the public right of ways depicted on the River Park II Plat that do not border a platted Lot. Each individual Lot owner is responsible for maintaining any trees and/or landscaping that is within the width of the deeded Lot that borders any public right of way. The Association shall not, however, be responsible for any other maintenance, improvement or repair within such areas as the same is the accepted responsibility and cost of the Town of Ridgway.

3.2 Membership. The exclusive qualifications for membership in the Association is record ownership in fee simple of a Unit. A Unit Owner shall automatically be the holder of one "Membership" in the Association as Membership is appurtenant to each Unit. Title to and ownership of a Membership shall pass only with the fee simple title to each Unit. The owner(s) of each Unit shall automatically be entitled to the benefits and be subject to the burdens relating to Membership as set forth in this Declaration, the Articles of Incorporation, Bylaws, and any Rules and Regulations promulgated by the Association. In the case of joint ownership of any Unit, the owners thereof shall be entitled to only one membership. Each membership shall be entitled to one vote in the affairs of the Association. By way of example only, each single family lot owner shall have one vote out of 32 total votes in the Owners' Association and a Fourplex with four Units shall have four votes or four out of 32 total votes.

3.3 Powers. The Association shall have all the powers, authority and duties permitted or set forth in this Declaration, the Articles, the Act and the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101, as amended. In general, the Association may do all acts that may be reasonably necessary or desirable to keep and maintain River Park II as a safe, attractive and desirable community.

3.4 Declarant Control. As allowed by C.R.S. § 38-33.3-303(5)(a), the Declarant hereby reserves full right and control of the Association for a period of time equal to the later of the following events: (a) Sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to unit owners other than a Declarant; (b) Two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; or (c) Two (2) years after any right to add new units was last exercised. During such period of Declarant Control, Declarant (or persons designated by Declarant) may appoint and remove, in its sole discretion, all officers and members of the Executive Board. Notwithstanding the foregoing provisions, the following shall apply with respect to the period of Declarant Control of the Association: (i) at least one member and not less than twenty-five percent (25%) of the Executive Board shall be elected by Lot owners other than the Declarant at such time as sixty days after conveyance of twenty-five percent (25%) of the Lots that may be created to Lot Owners other than Declarant; and (ii) at least thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Lot Owners other than the Declarant no later

than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to unit owners other than Declarant.

3.5 Transfer of Control. Within sixty (60) days after the Lot Owners other than Declarant elect a majority of the members of the Executive Board, Declarant shall deliver to the Association all Lot Owner and Association property held or controlled by Declarant as specified by the Act, C.R.S. § 38-33.3-303(9).

ARTICLE IV. ASSESSMENTS

4.1 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expenses and Assessments shall be assessed against all Lots in accordance with the formula for liability for the Common Expenses as set forth in this Declaration.

4.2 Annual Assessment / Commencement of Common Expense Assessments. Each Lot Owner, by accepting a deed to a Lot, shall be deemed to covenant and agree to pay Assessments to the Association. Assessments may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The budget shall be submitted to the Lot owners for ratification pursuant to the Act. Common Expense Assessments shall be due and payable in monthly, quarterly, or annually. Assessments may begin on the first day of the month in which conveyance of the first Lot to a Lot Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

4.3 Nonpayment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 20 days after the due date thereof, as established by the Executive Board, shall bear interest at the rate of 21% per annum from the due date, and the Association may assess a reasonable late fee as determined by the Executive Board. Failure to make payments within thirty (30) days of the due date thereof shall cause the total amount of such over due assessments, charges or fees, or monthly or other installments to become immediately due and payable at the option of the Board. The Association may also bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any assessment lien, and a Lot Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said unit or apply for the appointment of a receiver for the Lot without prior notice to the Lot Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a First Lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

4.4 Lien Priority. The lien of the Association under this article is a continuing lien, 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 Lien Security Interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Article does not affect the priority of mechanics' or materialmen's liens. Each Lot Owner recognizes and accepts that the lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any First Lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by state law. No such sale transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

4.5 Owner's Negligence or Misconduct. If the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, Related Users, agents, employees, customers or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner, and if not repaid to the Association within seven (7) days after the Association shall have given notice to the Owner of such expenses, costs, and fees shall automatically become a default assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of Article 4 hereof.

**ARTICLE V.
LIGHT INDUSTRIAL**

INTENTIONALLY DELETED AS INAPPLICABLE

**ARTICLE VI.
DESIGN REVIEW / DESIGN REVIEW BOARD**

6.1 Design Review Board. Declarant hereby establishes a Design Review Board ("DRB") which shall consist of at least three, but not more than five members. To help ensure that Declarant is able to guide and maximize the value of its desired development for River Park II, until 50% of the Lots to be created have been conveyed to Lot Owners, Declarant, in its sole discretion, shall appoint all members of the DRB, and may remove any appointee at any time upon written notice to such appointee. Thereafter, the Executive Board shall appoint the members of the Design Review Board Committee in accordance with the Bylaws.

(a) **Qualification.** Except for the members that may be appointed by Declarant, all but 2 members of the DRB appointed by the Executive Board shall be a Lot Owner if there are 5 DRB members and all but 1 member of the DRB shall be Lot Owners if there are 3 DRB members.

(b) **Term.** Notwithstanding the above, appointments shall be for staggered terms of a years different in termination so as to provide reasonable continuity to design review process.

(c) **Exemption.** Real estate owned by the Declarant (including both Lots and Common Elements) and Real Estate owned by the Declarant (including both Lots and Common Elements) and Real Estate owned by successors or assignees of Declarant assigned Declarant's exemptions hereunder shall be exempt from any control of the DRB.

(d) Power of Appointment by Declarant. Until 50% of the Lots have been conveyed to Lot Owners, Declarant, in its sole discretion, may at any time grant the power of appointment of the members of the DRB, and the chairman thereof, to any entity succeeding to substantially all of the assets of the Declarant, or to the Association.

(e) A review fee of fifty dollars (\$50.00) is payable by Lot owners on all plans submitted for DRB review. Declarant shall be exempt from this fee in perpetuity.

(f) Upon final plan approval by DRB, Lot owners shall deposit two-thousand five hundred dollars (\$2500.00) in an escrow account with the DRB which shall be held until the construction project and landscaping requirements are complete. This deposit insures that the construction and landscaping are completed according to the plans and specifications as submitted and approved by the DRB. The DRB reserves the right to use escrow funds for costs to remedy any violations including clean up or trash removal. In the event that escrow funds are used any remaining amounts will be refunded with an accounting of how said funds were spent.

6.2 Design Criteria. The DRB shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Lots, Common Elements and Limited Common Elements within River Park II shall comply with the restrictions, standards and requirements of this Declaration. The DRB may establish design rules and guidelines more specific than those set forth in this Declaration including standards for review applicable to all Lots. The approval or consent of the DRB on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Decisions shall be conclusive and binding on all interested parties. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, achievement of points/criteria established by "e-star" or Colorado "green" building standards, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, views, solar exposure, and conformity with the specifications, restrictions and purposes of this Declaration.

6.3 Required Approvals. No building, fence, alteration or other structure or Improvement shall be made to a River Park II Lot, including but not limited to a change in staining of exterior siding, unless complete and legible plans, specifications and samples have been first submitted to and approved in writing by the DRB. The DRB shall require applications for Improvements to include two (2) sets of scaled permit ready plans and specifications to show exterior design, height, materials, stain color, location of the structure or additions to the structure, horizontal and vertical plots, location and size of driveways, a full site plan, landscaping plans, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the DRB.

6.4 Reply and Communication. The DRB shall reply to all submittal of plans made in accordance herewith in writing within thirty (30) days after receipt. If approval of the plans is neither granted nor denied within this thirty (30) day time frame after receipt, such plans shall be deemed approved. Where prior written consent of approval of the DRB is required under the Declaration with respect to the making of an Improvement, such Improvements shall be conclusively deemed to have been made in compliance with the Declaration unless a notice of intention to commence legal action challenging and objection thereto is issued by the DRB within one hundred and twenty (120) days after completion of such Improvement. All communications and submittals shall be addressed to the DRB at such address as the chairman of the DRB shall hereafter designate in writing addressed and mailed to the Lots Owners.

6.5 Variances. The DRB may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in a development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Elements nor deviate substantially from the general intent and purpose of this Declaration. In the event that the request for a variance is disapproved by the DRB, the applicant shall have the right of appeal to the Executive Board of the Association.

6.6 Waivers. The approval or consent of the DRB, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the committee as to any application or their matters subsequently or additionally submitted for approval or consent.

6.7 Liability. The DRB and the members thereof, as well as any representative of the committee designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Every Lot Owner or other person who submits plans for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the approving body or Declarant to recover any such damages. Approval of plans and specifications shall not be deemed to constitute compliance with the requirements of any local building codes or land use regulations and it shall be the responsibility of the Lot Owner or other person submitting plans and specifications to comply therewith.

6.8 Records. The DRB shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

6.9 Inspection. The DRB shall have the right and authority to inspect construction in progress to assure its conformance with plans approved by the Committee.

6.10 Enforcement. Enforcement of this Declaration may be by any proceeding at law or equity against any person or persons violating or attempting to violate any such provision. The DRB and any interested Lot Owner shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Article, the DRB 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 of the DRB or of any Lot Owner to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

ARTICLE VII. COVENANTS, CONDITIONS, MINIMUM STANDARDS AND RESTRICTIONS

7.1 General Intent. This Article intends to improve and protect the real property values within Filing 2 of River Park P.U.D. The River Park II Plat and this Article restrict building footprints, setbacks and locations to discourage neighboring Lots from obscuring solar exposure. Subject to development rights and special Declarant rights, all real estate, lots and units within River Park II shall be held, used and enjoyed subject to the following limits and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived in writing, in whole or in part, by the vote of the DRB in their sole and absolute discretion if such strict application would be unreasonable or unduly harsh under the circumstances.

7.2 Architecture and Building Materials. The exterior of all structures shall feature a combination of stone, wood, stucco or rusted corrugated metal. All exterior colors, including roofs, shall blend with the natural surroundings. All exterior wood shall generally retain a natural, earth-tone color or be stained with neutral tones, except that window and fascia trim may be painted with brighter colored paint for accent and interest.

(a) Porches. All dwelling units must have a covered front porch of at least 60 square feet per Unit, with all columns being at least 8 inches by 8 inches in size.

(b) Garages. If a Garage is a front facing garage, the Unit Owner shall exert every effort to make the front entrance to the house more prominent ("proud") than the Garage doors. Garages on Escalante Street shall be in the rear of the lots unless otherwise approved by the DRB. On River Park Drive, Garages may be in the Front of the house, but the design of the house must meet all criteria set forth herein regarding the enhanced design elements.

(c) Siding. Painted aluminum and vinyl siding shall be strictly prohibited. Wood siding, cement board or masonite is permitted and shall be individual boards (or planks) of not less than 3 inches and not more than 8 inches nominal face width unless otherwise approved by the DRB. Wood siding may be run vertically or horizontally. Rusted, corrugated metal siding shall also be permitted. These restrictions shall not be read to prohibit materials which are created and/or invented after the dates of these covenants, however, the use of any such material must be approved by the DRB.

(d) Windows. Windows shall have a double or triple glazing and may not be mirrored. Stained glass windows shall be permitted.

(e) Roofs and Roof Pitches. Primary roof pitch shall be a minimum of 6:12 and the secondary roof pitches shall be a minimum of 2:12. Roof lines shall be varied and broken, with an avoidance toward long spans of unbroken roof planes. Gable or hip roof forms shall be encouraged. Dormers are encouraged to break up long roof line expanses. Dormers may have gable, hip or shed forms. Rusted or non-colored corrugated metal, slate, concrete roof tiles and cedar shake shingles shall be permitted. Reflective metal roofing is prohibited.

(f) Gutter/Flashing. Exposed metal flashing, gutters, downspouts, snow fences and other roof hardware shall be color-coordinated to match the finish and/or color of adjacent materials.

(g) Chimneys and Flues. Chimneys and flues shall have an exterior finish of stone, stucco or rusted metal. Chimney caps shall be made of stone, pre-cast concrete with a sand-blast or exposed aggregate finish, rusted metal or copper.

(h) Foundations. Foundation walls shall not be exposed. They shall be covered with stone, faux stone, stucco or rusted corrugated metal flashing or other material approved by the DRB. Reflective metal flashing for perimeter foundation cover shall be permitted so long as such material does not exceed 4.5 feet in height. All foundations are required to be designed and stamped by a Colorado licensed engineer.

(i) Foundations and Retaining Walls on River Park Drive. All foundations and retaining walls on lots which front on River Park Drive shall not be exposed concrete. Said foundations must be covered with stone, stucco, rusted metal, faux stone, or other material approved by the DRB.

(j) Lots 200 ,201, 202, 203, 204, 205, 218, 219, 220, 221 Special Requirements. All Lots on River Park Drive (Lots 200, 201, 202, 203, 204, 205, 218, 219, 220, 221) shall be required to have a minimum of 25% of the front elevation of the house covered in rock, stone or faux stone. Lots 219, 220 and 221 are particularly prominent and visible and therefore there shall be an enhanced street presence with the first floor dominated by stone or other acceptable material. Garage Doors will be expected to be of premium quality and appearance.

(k) Construction Time. All construction shall be completed not more than 12 months from the issuance of a Building Permit.

(l) Landscaping. Landscaping as approved by the DRB at design review stage must be completed within six months of the completion of construction of the Unit.

7.3 Design Guidelines and Parameters. The following restrictions, which may be more specifically depicted on the River Park II Plat, shall apply to all Improvements relative to finished, heated space, exclusive of below-grade areas, porches and patios:

Lot Number Series	100	200	300	400
Affordable Deed Restriction	no	no	no	yes
Max. Front Setback	25'	25'	25'	25'
Min. Square Footage/Unit	1200'	1,500'	900'	900'
Min. Primary Roof Pitch	6:12	6:12	6:12	6:12
Min. Secondary Roof Pitch	2:12	2:12	2:12	2:12
Min. Front Porch Sq. Ft.	60'	60'	60'	60'

7.4 Construction Staging and Landscaping Restrictions. All construction shall take place in a manner that minimizes the impact to the native plants, grasses and tress. All plans submitted to the DRB shall depict or contain a statement about construction staging and staging area. Any disturbed area shall be revegetated within six months after completion of any structure or building pursuant to an approved landscape plan. No accumulation of construction refuse or other trash shall be permitted on lots. Construction refuse is to be hauled off at regular intervals including any wind blown refuse . Construction on lots shall be kept in a neat and orderly appearance.

(a) Lot Owners shall be responsible for controlling and eliminating noxious weeds "Graveled" yards shall be prohibited. Notwithstanding any other provision, the restrictions with respect to nonnative landscaping and manicured, sod greenery shall not apply to any common elements and parks to be owned and maintained by the Association.

(b) Landscaping Plans. A detailed landscape plan shall accompany any application for a DRB building permit for Improvements on each Lot. The landscape plan must show native trees and vegetation that will facilitate summer shading, wind blocking and maximum solar exposure in winter. View corridors or nearby Lots should also be considered. The landscape plan must be approved by the DRB. The Design Review Board may require a bond or deposit, which in its sole discretion is sufficient in form and amount, to ensure that the approved landscaping and tree plan is implemented.

(d) Trees. Every landscape plan shall provide a minimum caliper of 1 ½" caliper for deciduous trees or a minimum height of 6' for conifer trees. No tree 3" in diameter or greater or six feet or greater in height may be removed from River Park II without the prior

written approval of the Association/DRB. The replacement of unlawfully removed trees may be required or may be done by the Association at the expense of the Owner involved. The "street trees" planted by the Declarant may count towards the Town of Ridgway landscape requirement.

7.5 General Restrictions. All of the River Park II Lots shall be held, used and enjoyed subject to following limitations and restrictions, subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

(a) Restrictions on Fences. With the exception of unobstructive wire fences to protect gardens and trees only and ornamental fences in no case higher than four feet all fences require prior written approval of the DRB. No gates or structures may be placed across any of the access roads or trail easements within River Park II. Under no circumstance shall fences over four feet in height shall be allowed on 200 series lots. Fencing for all lots boarding Roundhouse Park shall receive special consideration; fencing in such area shall be encouraged to be a vegetated hedge/buffer constructed and implemented only pursuant to a uniform and comprehensive plan and design approved by the Declarant, Association and DRB.

(b) Solid Fuel Burning Devices. Solid fuel burning devices shall be allowed within River Park II provided that such device shall be limited to Class III, high efficiency units having a catalytic converter. As used in this paragraph, "solid fuel burning devices" shall include, but not be limited to, wood stoves, pellet stoves. Nothing in this paragraph shall prohibit natural gas fireplaces or high-efficiency masonry-type wood heaters approved in writing by the DRB.

(c) Roof Items. Swamp coolers and air conditioning units shall not be visible from the street.

(d) Animals/Dogs. No animals, horses, swine, goats, livestock, or poultry of any kind may be raised, bred, kept or pastured on the River Park II Lots. Dogs and generally recognized house pets (to a maximum of three) are allowed subject to all Town of Ridgway ordinances or laws. The Association may ban problem dogs with notice to and an opportunity to be heard from the Lot Owner who owns the dog(s). The breach of any of these rules shall constitute a noxious and offensive activity. The Declarant or any Lot owner may enjoin or seek damages for the maintenance of such animals within River Park II. For the purposes of this Declaration, a problem animal shall mean an animal that barks uncontrollably, an animal that roams freely and habitually, an animal that chases or harasses wildlife or an animal that is otherwise unsafe or vicious. An animal shall be presumed to be a problem animal in the event the Association has received individual written and signed complaints from at least six different lot owners. Lot Owners shall hold the Association harmless from any claim resulting from any action of their animals.

(e) Vehicles. Vehicles are discouraged within River Park II and use of the pedestrian trails, bike paths and sidewalks is encouraged. Cars and all vehicles should be parked behind all houses. Campers, large commercial trucks and vehicles (not pickups), motor homes, motorcycles, jet-skis, boats, boat trailers, truck and utility trailers and other recreational vehicles may not be maintained or stored on the Lots unless stored at all times in a garage approved by the Design Review Board. Small boats (22' and under), kayaks and canoes may be stored in the rear of a structure. No abandoned vehicles shall be permitted on any Lot. A vehicle shall be considered abandoned if it remains no operative for a period of 30 days. In such instance, the Association shall send a letter requiring removal of the vehicle within fifteen (15) days from the receipt of the letter, and if the Owner does not comply within that

period of time, the Association may have the vehicle towed away at the violator's expense. The Association may promulgate additional rules and regulations regarding the parking of all kinds of vehicles.

(f) Utilities. All electric, gas, water, television, radio and telephone line installations and connections shall be placed underground except for customary meter boxes. All types of refrigerating, cooling and heating apparatus shall be concealed or buried. Propane Tanks are Prohibited. Satellite dishes greater than three feet in diameter shall be prohibited. All other satellite dishes must be approved in writing by the DRB.

(g) Garbage. All trash containers shall be animal proof and shall be the container approved by the DRB. Trash containers shall be stored in enclosed areas (i.e. garages) to discourage wild animals.

(h) Lighting and Signs. Exposed bulbs shall not be permitted on any exterior light fixture and all such fixtures shall incorporate some sort of opaque light shield to mitigate ambient light pollution. Halloween and Christmas are the only two holidays where temporary decorative lighting shall be permitted. The temporary decorative lighting for Halloween shall be erected no earlier than October 25th and shall be taken down no later than November 7th. The temporary decorative lighting for Christmas shall be erected no earlier than December 15th and shall be taken down no later than January 5th.

(i) Temporary Structures. The owners of Lots within River Park II, including tenants, guests or other invitees, are strictly prohibited from erecting, constructing, placing, using, occupying or living in any mobile home, recreational vehicle, yurt, tent, teepee or other similar structure (hereinafter referred to as "Temporary Residential Structure") on any Lot within River Park II. Notwithstanding the foregoing, the DRB may approve a Temporary Residential Structure to facilitate the construction of an approved structure on a Lot provided that such structure is temporary. Temporary Residential Structures does not pertain to a Lot owner erecting a tent in their respective backyard for the purpose of a recreational camping experience for youth age 18 years and under. Under no circumstance shall the tent be erected for more than two-weeks.

(j) Use and Occupancy. The use and occupancy of all Lots shall be limited to residential use. Notwithstanding the foregoing limitations, an Owner may use a Lot to operate a home occupation as long as such home occupation: (i) does not constitute a nuisance; (ii) does not entail any kind of manufacturing activity; (iii) does not create or generate any environmental pollution, including offensive noise or odor; (iv) does not require any on-site employees; and (v) does not have any appreciable increase in traffic.

(k) No Hazardous Activities. No activities shall be conducted within River Park II which are or may be unsafe or hazardous to any person or property, including wildlife and trees. A Lot Owner shall be absolutely liable to all other Lot Owners, including Declarant, their family members, guest, invitees, licensees and contract purchasers for any damages or personal injuries resulting in such hazardous activities on his or her Lot.

(l) Rentals. No time-sharing or other forms of interval ownership shall be allowed within River Park II. All lessees or tenants of residential dwellings shall in all respects be subject to the terms and conditions of this Declaration. The Association may regulate, prohibit and condition rental activity and may set rules on tenant access and use of Common Elements. Tenants and lessees shall be considered non-members for all Association purposes. All leases and rental agreements of Lots shall state that the failure of the tenant, renter or guest to

comply with the terms of the Governing Documents shall constitute a default of the lease or rental agreement and of this Declaration, and such default shall be enforceable by either the Association or the landlord, or both.

(m) Maintenance and Repairs. Lot Owners shall be responsible for the maintenance, upkeep, repair and replacement of the properties, landscaping, buildings, homes and Improvements within their Lot. All Lots shall be maintained in a neat and attractive condition. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. Trash, litter, junk boxes, bottles, cans, implements, machinery, lumber or other building materials shall not be permitted to remain exposed upon or within any Lot so that the same are visible from any neighboring Lot, any street or common area except as necessary during construction. The period of construction shall not exceed nine (9) months from the date the building permit is issued. Declarant, its agents and assigns and the Association, and its agents, shall have the authority to enter, replace, maintain, repair and clean up Lots and Improvements which do not conform to the provision of this section, and to charge and collect from the Lot Owners thereof all reasonable costs related thereto as an assessment hereunder. Areas where lawns have been planted shall be kept free of weeds, and unsightly vegetation. This paragraph shall not require removal of native vegetation, such as sagebrush, oak brush, rabbit brush or cactus. Any building or Improvement which has been damaged by fire or other casualty causing the same to be unsightly shall be repaired or removed and revegetated within nine (9) months from the date of such casualty.

(n) Roadways. Declarant or the Association may set restrictions pertaining to speed of vehicles, traffic and parking regulations and noise level of vehicles, even if such restrictions are more restrictive than the laws of the state or local government having jurisdiction over the road within River Park II, provided such restrictions are not unreasonable.

(o) Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

(p) Easements. Individual Lot Owners may not grant easements across their Lots without the express written consent of both Declarant and the Association thereafter.

(q) Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, rule and regulations concerning and governing the River Park II or any portion thereof may be adopted, amended, or repealed from time to time by the Executive Board and/or the DRB. The Executive Board may establish and enforce penalties for the infraction thereof. Breach of any Rule or Regulations shall constitute a noxious and offensive activity, constituting a nuisance.

(r) Driveways. All driveways shall be graveled or paved by the Owner within three months after a house has been completed. There shall be only one access point of ingress and egress for each lot. The Association reserves the right to enter each and every Lot for the purpose of improving the driveway of such Lot if the Owner fails to gravel or pave its driveway after the Association has made ninety (90) days written demand to do so. The cost of such graveling or paving shall be the responsibility of the Owner, and the Association may enforce such costs as any other assessment. In no event shall the graveled, concrete or pave surface of a lot exceed 25% of the total lot area unless approved in writing by the DRB.

(s) Signs. Except for activities of Declarant, no signs, advertisements, billboards or advertising structures of any kind or character may be erected or maintained upon a Lot. Notwithstanding the foregoing, the Board or the DRB shall approve and authorize signage

for street identification, public directions, rules enforcement and open space/trails/park usage. Real estate signage is allowed within River Park II so long as the sign is no larger than three feet square.

(t) Garages. Each Lot Owner may construct one garage attached to a primary residence or detached so long as it is within the building setback and so long as such garage is constructed of suitable material and design so as to be compatible with the materials and design of the primary dwelling. Every effort shall be made so that Garages are not the dominant architectural feature on the front of a unit and so that the front entrance to the house/unit is at least 2' more prominent ("proud") than the garage entrance.

(u) Insurance Rates. Nothing shall be done or kept on the Lots which will increase the insurance rate on any Association property without prior Board approval, nor shall anything be done or kept in the properties which would result in the cancellation of insurance on any Association property or which would be in violation of any law.

(v) Construction Trash. All trash generated by construction shall be contained in proper trash containers and picked up at all times. All trash and building material, including dirt, shall be kept on the lot that is under construction. Staging of all construction and building material, dirt, gravel, rock, etc. on the open space or neighboring lot(s) shall be strictly prohibited.

7.6 Declarant. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, to perform such reasonable activities, and to maintain portions of River Park II as deemed reasonably necessary or incidental to the construction, development and sale of Lots in the development of River Park II and adjoining properties, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model homes, temporary sales offices, parking areas and lighting facilities which do not constitute a nuisance to Lot Owners. Nothing in this Article shall be constructed to limit or interfere with the Declarant's development of River Park II, any additions thereto or any adjacent properties.

**ARTICLE VIII.
SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS
AND OTHER RESERVED RIGHTS**

Notwithstanding any provision in this Declaration and the Governing Documents to the contrary, all Development Rights and Special Declarant Rights set forth in this Article 8 shall terminate when (i) the maximum Lots allowed in River Park II have been sold to individual Lot Owners and all initial Improvements thereon are completed, or (ii) July 1, 2035, whichever shall first occur. Nothing stated in this Article, including the degree of specificity, shall be deemed to limit or waive any of Declarant's common law property rights or entitlements, all of which are hereby reserved. All rights reserved by this Article shall be fully assignable and transferable to any person, dealer, entity or governmental agency.

8.1 Development Rights and Special Declarant Rights. Declarant has, and by these presents does hereby reserve the following Development Rights and Special Declarant Rights:

(a) The right to relocate boundaries between adjoining Lots, the right to enlarge Lots, enlarge the Common Elements, reduce or diminish the size of Lots, reduce or diminish the size of areas of the Common Elements, subdivide Lots, condominiumize Lots, complete or

make improvements (whether or not indicated on the River Park II Plat), relocate and realign trails;

(b) The right to create or construct additional Lots, Common Elements or Limited Common Elements, to subdivide Lots and to convert Lots into Common Elements or to convert Common Elements into Lots;

(c) The right to use, and to permit others to use, the easements, utility infrastructure, drainage systems, waterways, pipelines, ditches, trails, parks, common spaces, common elements, public roads, public streets, public alleys, public sidewalks and public paths through River Park II for construction, performance or exercise of Declarant's rights under this Declaration and otherwise;

(d) The right to merge or consolidate River Park II with another Community;

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

(f) The right to add Lots and to subject all or any part of Tract D of the Ridgway Light Industrial Park as per the Plat recorded at Reception number 176459 and additional unspecified real property to the provisions of this Declaration;

(g) The right to amend the Governing Documents or any other maps or plats in connection with the exercise of any development right;

(h) The right to assign in whole or in part, to the Association, or to its successors in title to any portion of River Park II, any of the rights reserved in the Declaration upon execution and delivery of such assignment in writing;

(i) The right to appoint members of the DRB and the Board of Directors;

(j) The right to impose additional restrictive covenants and protective covenants upon River Park II provided they are not inconsistent with, nor do they lower the standards of the original covenants;

(k) The right to exercised any Development Rights defined, reserved or allowed in the Act, C.R.S. § 38-33.3-103(14), including but not limited to, the right to withdrawal pursuant to C.R.S. § 38-33.3-205, all of which rights are incorporated herein by reference as though fully set forth;

(l) The right to exercised any Special Declarant Rights defined, reserved or allowed in the Act, C.R.S. § 38-33.3-103(29), all of which rights are incorporated herein by reference as though fully set forth;

(m) All the easement rights specified by C.R.S. 38-33.3-216(1);

(n) The right to improve, maintain, and use all the easements created, reserved and disclosed in this Declaration together with the right to assign the same.

(o) The perpetual right to retain and lease Lots;

(p) The right to extend, improve and use River Park II Drive for access to adjoining properties and Declarant's property (which right may exercised now or at any time in the future regardless of when and whether Declarant exercises development rights relative to subsequent Filings); and

(q) The right to establish and declare additional easements and dedications for roads, utilities, trails. Each of the foregoing reserved rights may only be exercised in a manner consistent with the Act, except that Declarant may, subject to applicable law, change the overall development plan for River Park II. The Declarant may exercise all its reserved rights in connection with other persons and entities and additional property may be added to River Park II through annexation. Declarant makes no assurance concerning the construction, building types, architectural style and/or size of Lots as may be created; provided, however, that the quality of construction will be consistent with the Improvements constructed in the initial portions of River Park II. Subsequent to the initial real estate and Improvements made subject to this Declaration, any additional buildings, structures and types of Improvements to be placed on the Lots, Common Elements, Limited Common Elements, or public right of ways may be of such quality and type as the person developing the same may determine, and those Improvements need not be of the same size, style or configuration.

8.2 Other Additional Reserved Rights. Declarant also reserves the following additional rights.

(a) Sales. The right to maintain sales offices, management offices and models in Lots or on the Common Element.

(b) Signs. The right to maintain signs and advertising on River Park II to advertise River Park II or other communities developed or managed by, or affiliated with, the Declarant.

(c) Dedications. The right to establish, from time to time, by dedication or otherwise, public streets, utility or other easements for purposes including, but not limited to, public access, access paths, trails, walkways, drainage, recreational areas, parking areas, ducts, shafts, flues, ditches, conduit installation areas, and to create other reservations, exceptions and exclusions.

(d) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use or lease of water, repair, maintenance or regulation of Common Elements, all of which may or may not be a part of River Park II.

(e) Construction Easement. Declarant and its assignees expressly reserve the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Lots and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Lot Owner or holder of a First Lien Security Interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights and special Declarant rights and for access and utilities to any properties which Declarant had the right to add to River Park II but which have not been added. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across all portions of River Park II except Lots sold to a purchaser unless disclosed and/or reserved.

(f) Reimbursements. The prior right to receive, obtain and demand financial reimbursement and fees from governmental agencies, the Town of Ridgway and any other person, developer, landowner or entity who wishes to use and/or tie into any of the infrastructure,

roads or utilities installed by the Declarant as part of a private agreement, special district, improvement district or other mechanism whatsoever.

(g) **Unspecified Real Estate.** The right to subject additional unspecified adjoining real property to the provisions of these Declarations and to otherwise create additional Lots. The consent of the existing Lot owners or holders of first lien security interests shall not be required for any such expansion by the Declarant and by accepting title to a Lot, each Owner hereby waives such right.

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

8.3 Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of Ouray County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. 38-33.3-210 and C.R.S. 38-33.3-209(6) without the consent of the Association, any Lot Owner or any holders of First Lien Security Interests.

8.4 No Further Authorizations Needed. The consent of Lot Owners or holders of First Lien Security Interests shall not be required for exercise of any reserved rights, development rights or special Declarant rights provided the rights to be exercised are consistent with any planned unit development or other governmental conditions or requirements, and Declarant or its assignees may proceed without limitations at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of River Park II in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved right or to expand, improve or supplement River Park II beyond the number of Lots initially submitted.

8.5 Amendment of the Declaration or Map. If Declarant or its assignees elect to exercise any rights set forth in this Article, that party shall comply with the Act by recording an amendment to the Declaration and/or an amendment to the River Park II Ridgway Business Park Plat.

8.6 Interpretation. Recording of amendments to the Declaration and the River Park II pursuant to reserved right in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to River Park II as expanded and to any Additional Improvements, and the same shall be added to and become a part of River Park II for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or River Park II Plat. Reference to the Declaration and River Park II Plat in any instrument shall be deemed to include all Amendments to the Declaration, and the River Park II Plat without specific reference thereto. Reference to these Declarations and Plat Map in any instrument shall be deemed to include all amendments thereto.

8.7 Termination of Reserved Rights. The rights to reserved to Declarant, for itself, its successors and assigns, shall expire as set forth herein, unless (i) reinstated by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the expansion right by Declarant, (ii) extended as allowed by law or, (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of Ouray County, Colorado.

8.8 Additions by Others. Additions of Lots to River Park II may be made by persons other than the Declarant, or its successors and assigns or Owners, upon approval of the Association pursuant to a vote of a majority of a quorum of its members. Such approval shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, both recorded in records of the Ouray County Clerk and Recorder.

**ARTICLE IX.
INSURANCE AND CONDEMNATION**

9.1 Owner Insurance Duties and Obligations. All Owners shall obtain and maintain (at their own expense) in full force and effect, at all times, all necessary and appropriate insurance coverage for their particular Lot and Improvements (including all easements over and across their Lots) for general liability and hazards.

9.2 Association Insurance Carried. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein; which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. The Association shall maintain, to the extent reasonably available, with the following terms and provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Lot Owner and shall provide that such policies may not be canceled or modified without a least thirty (30) days prior written notice to all of the Lot Owners and the Association.

(b) If requested by the holder of a First Lien Security Interest, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to such holder.

(c) All liability insurance shall be carried in blanket form, naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, their successors and assigns, and Lot Owners as insured.

9.3 Hazard Insurance on the Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to the Common Elements and the other property of the Association. If obtainable the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board (a) an inflation guard endorsement, and/or (b) any special PUD endorsements.

9.4 Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Lots and the Common Elements, including structural coverage of the Lots, in such limits as the Board may determine from time to time, but not in any amount less than One Million Dollars (\$1,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitations, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of River Park II. All liability insurance shall name the Association as the insured.

9.5 Fidelity Insurance. The Association may obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officer, directors, trustees and employees" shall not include any officer, director, manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

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

9.7 Officers' and Directors' Personal Liability Insurance. The Association may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. Neither the term "officers" nor the term "directors" shall include any officer, director, agent or employee of Declarant nor any officer, director, employee or agent of any professional manager or managing agent heretofore or hereafter employed by the Association.

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

9.9 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent of the full insurable replacement cost.

9.10 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the assessments levied by the Association.

9.11 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association and shall submit evidence of such coverage to the Association.

9.12 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Lot Owners, the Association and the Lot Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

9.13 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a First Lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Lot Owners and holders of the First Lien Security Interest as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association Lot Owners and holders of the First Lien Security Interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

9.14 Duty to Repair. Any portion of River Park II for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Lot Owner, at the Lot Owner's option, whether the repair is done by the Association or the Lot Owner, except as provided in the Act.

9.15 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceed or hazard insurance proceeds to the Lot Owners, the distribution shall be as the parties with interests and right are determined or allocated by record and pursuant to the Act.

**ARTICLE X.
MISCELLANEOUS PROVISIONS**

10.1 General Enforcement. The Declarant, the Association, or Lot Owner(s) may enforce the restrictions, conditions, covenants, and reservations contained by this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for the breach, threatened breach or violation thereof and shall recover its reasonable attorneys' fees incurred in enforcing these covenants or to restrain such violation or attempted violation. Failure of the Declarant, the Association or of any Lot Owner to enforce any covenant or restriction herein contained shall no event be deemed a waiver of the right to do so thereafter. The Executive Board may mail or post on a bulletin board at a conspicuous place within the Common Elements notices of any covenant violations by members and copies of any recorded statements. Failure to post shall not affect the validity of any lien or covenant violation. In the event a Lot Owner or Declarant brings an action to enjoin any violation of this Declaration, each Owner shall be deemed to have covenanted and agreed to the entry of a temporary restraining order, preliminary injunction and permanent injunction, without the requirements of a security bond being posted under the provisions of the Colorado Court Rules or applicable statutes.

10.2 Association Enforcement. In the event of a failure or refusal to comply strictly with any provision of this Declaration, a notice shall be mailed by the Association to such violator setting for the nature of the violation, including the provisions of this Declaration violated, and shall be signed by at least one member of the Executive Board or an officer of the Association. Such notice shall also state the action required by the Owner to cure the violation, the time required for such action and the nature of the action contemplated by the Association if the violation is not cured by the Owner. Any action taken by the Association to correct such violation shall be at the sole cost and expense of such Owner (including any attorneys' fees incurred in conjunction therewith), and the Association shall charge and assess such Owner for the full cost thereof. The Association may avail itself of any and all remedies available to it in law or equity including, but not limited to, injunctive action and appropriate restraining orders.

10.3 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

10.4 Amendment of Declaration, Map or Plat by Declarant. If Declarant shall determine that any amendments shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to real property not yet part of or adjacent to River Park II, then, subject to the following sentence of this Article, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Lot Owner or the Association. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of twenty (20) years from the

date this Declaration is recorded, and a copy of such amendment shall be mailed first class, postage prepaid to all Lot Owners. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this Article on behalf of each Lot Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Article.

10.5 Amendment of Declaration by Lot Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven (67%) of the votes of the Association Members entitled to vote and with the written consent of the Association. The amendment shall be recorded in the office of the Clerk and Recorder of Ouray County, Colorado, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

10.6 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment to or repeal of any provision of this Declaration reserving development rights to or for the benefit of the Declarant, or its successors and assignees, shall not be effective unless Declarant, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing consent requirement shall be an express condition precedent to any such amendment or repeal.

10.7 Interpretation. This Declaration shall be liberally construed to effectuate the purposes of (i) creating a uniform plan for the future development of River Park II, (ii) the development and maximum economic use of Declarant's adjoining properties, (iii) the development and use of other near and adjoining properties with the consent and cooperation of Declarant, and (iv) promoting and effectuating the fundamental concepts set forth in this Declaration. This Declaration shall not be deemed to create an third party beneficiaries or allow or permit any person or entity to use the infrastructure and improvements installed and developed by Declarant without the prior written consent of and compensation to Declarant. All regulations, rules and laws of the Town of Ridgway shall apply to River Park II (including the Residential Zone District for all residential lots), as modified by the Preliminary Plat Approval, P.U.D. Agreement and the final plats and each Owner and the Association shall comply with the same. The Laws of the State of Colorado shall govern and construe this Declaration.

10.8 Binding Document. Except as otherwise provided herein, this Declaration shall be a binding real covenant upon and shall inure to the benefit of Declarant, the Association, and each Owner and their respective tenants, heirs, personal representatives, agents, successors and assigns. Each Owner within River Park II, by virtue of acceptance of any right, title or interest in any real property within River Park II, shall be deemed to have accepted, ratified, adopted this Declaration and declared it as a personal covenant of such Owner and the Association. This Declaration, and all its provisions, as amended, shall run with and bind the title to the land submitted hereby in perpetuity.

10.9 IMPORTANT NOTICE. Any person who desires to buy a Lot in River Park II should obtain the advice of a lawyer before doing so because this written Declaration imposes important obligations, disclosures and limitations regarding the ownership of a Lot. This notice is intended to equalize the commercial setting of the negotiations.

IN WITNESS WHEREOF, Declarant executed this Declaration as of the date subscribed above.

DECLARANT: **NORTHSIDE RIDGWAY, LLC**
a Colorado limited liability company

By: Jack T. Petruccelli
Jack T. Petruccelli, Manager

STATE OF COLORADO }

OURAY COUNTY }

Jack T. Petruccelli, personally appeared before me and acknowledged the foregoing Declaration of Covenants, Conditions and Restrictions in his capacity as Manager of Northside Ridgway, LLC, a Colorado limited liability company, on this 27 day of September, 2005.

Witness my hand and official seal.
My commission expires: 02/24/08.

Notary Public Andrew A. Mueller



EXHIBIT A

DESCRIPTION OF THE PROPERTY AT THE TIME THE DECLARATION IS

RECORDED: Lot C , Replat of Outlot P2/A of River Park Ridgway Business Park, Filing No. 1. according to the Plat recorded at Reception No. 186268 on November 5, 2004, in the Office of the Ouray County Clerk & Recorder.

Subject to the Following:

[ALL EASEMENTS, RESTRICTIONS, RESERVATIONS OF RECORD WHICH ARE SHOWN ON A TITLE INSURANCE COMMITMENT].

- 1.) The Plat of River Park II recorded at Reception No. 189380 in the office of the Ouray County Clerk & Recorder.
- 2.) The P.U.D. Development Agreement recorded at Reception No. 174439 in the office of the Ouray County Clerk and Recorder.