

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
RIVER CLUB AT SOUTH FORK RANCHES**

**A PLANNED COMMUNITY LOCATED IN RIO GRANDE COUNTY, COLORADO**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER CLUB AT SOUTH FORK RANCHES (“Declaration”), is made on the date hereinafter set forth (the “Effective Date”) by South Fork River Club LLC, a Colorado limited liability company, with an address at 810 Waukegan Road, Deerfield, Illinois 60015, (“Declarant” or “SFRC”), for the purpose of forming a planned community under the terms of the Colorado Common Interest Ownership Act, C.R.S. Section 38-33.3-101 through –319, as amended, and as may be hereafter amended (the “Act.”).

**RECITALS**

A. SFRC owns certain real property located in Rio Grande County, Colorado, and is described and platted in the real property records of Rio Grande County as River Club at South Fork Ranches (“River Club at South Fork Ranches” or “Filing No. 1”).

B. SFRC desires to submit Filing No. 1 and other structures and improvements now or hereafter located on Filing No. 1 to the form of planned community ownership as provided for by the Act.

C. Filing No. 1 is located within “South Fork Ranches,” a Master-Planned community (“South Fork Ranches”), and is subject to the Master Declaration of Covenants, Conditions and Restrictions for South Fork Ranches, LLC (the “Master Declaration”), as the same may be amended from time to time.

D. SFRC has caused River Club Homeowners’ Association, Inc., a nonprofit corporation (the “Association” or the “River Townhomes Association”), to be incorporated under the laws of the State of Colorado for the purpose of exercising the functions to be exercised by the Association as set forth in this Declaration.

E. SFRC desires to establish the Association as a “Subassociation” (as defined in the Master Declaration), to act as the homeowner’s association for River Club at South Fork Ranches to maintain the same as an exceptional, desirable and pleasant community for all of its residents. The submission of Filing No. 1 to this Declaration is intended to create a superior, wholesome and attractive community where the Association is responsible for certain work required to maintain the exterior of the Units, and to design, install and maintain Landscaping within Filing No. 1, including Unit Landscaping, and where the Association shall undertake such additional responsibilities as the Executive Board determines is necessary to ensure the exceptional, desirable and pleasant environment for all of its residents.

F. This Declaration is intended to complement and supplement the covenants, conditions, restrictions and easements contained in the Master Declaration for the benefit of Owners in River Club at South Fork Ranches, and their respective successors and assigns.

G. Every Owner within Filing No. 1 shall automatically be a member of both the Master Association and a member of the River Townhomes Association.

## **ARTICLE 1.**

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

**1.1 Submission of Filing No. 1.** Declarant, as the owner in fee simple of Filing No. 1, hereby submits Filing No. 1 to the terms and provisions of this Declaration, as the same may be amended from time to time, together with all appurtenant rights and easements and the buildings and improvements constructed or to be constructed thereon, together with such additional real property as may now or hereafter be made subject to this Declaration. Declarant further declares that all of Filing No. 1 shall be held, sold, and conveyed subject to the easements, covenants, conditions and restrictions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with the land and shall be binding on all parties having any right, title or interest in Filing No. 1 or any part thereof, and their respective heirs, legal representatives, successors, and assigns, and shall inure to the benefit of each Owner.

**1.2 Number of Units.** The number of Units initially included in the River Club at South Fork Ranches community is fifty-six (56). The initial Units are set forth on the Plat recorded with this Declaration. Declarant reserves the right to add additional Units upon submission of additional filings to this Declaration as provided for in Article 14, and to create and add up to the maximum number of Units allowed by any governmental entity having jurisdiction over Filing No. 1.

**1.3 Unit Boundaries.** The Unit Boundaries are the Lots described in Filing No. 1, the exact boundaries of which are depicted on the Plat filed with this Declaration, and subject to one or more party wall agreements with adjoining Units.

**1.4 Acknowledgement of Master Declaration and the Master Association.** Declarant hereby acknowledges and affirms that Filing No. 1 is subject to the covenants, conditions, restrictions and easements contained in the Master Declaration.

(a) Conditions, Covenants and Restrictions of Master Association and River Townhomes Association. The covenants, conditions and restrictions contained in this Declaration shall be no less restrictive than those contained in the Master Declaration. To the extent there exists a conflict between the covenants, conditions and restrictions contained in the Master Declaration and this Declaration, the more restrictive covenant, condition or restriction shall control. The Declarant and the Executive Board of the River Townhomes Association shall comply with the Master Declaration in developing River Club at South Fork Ranches.

(b) Master Association and Owners' Rights of Use. The Declaration hereby grants to the Association and to the Owners within the River Club at South Fork Ranches community the right to use and enjoy the Common Elements and Common Areas located within Filing No. 1, subject to the conditions, covenants and restrictions contained in this Declaration. The Association's rights of use to the Common Elements and Common Areas shall be exercised

in a consistent and non-discriminatory manner, and at all times in accordance with the conditions, covenants and limitations contained in this Declaration.

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

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

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

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

(c) Assessments. Collectively, any Common Expense Assessments, any Special Assessments, Default Assessments, assessments for reserves, assessments by class of owners, assessments related to assigned Limited Common Elements, insurance assessments, and any other assessment made to accomplish the purposes set forth in this Declaration to establish an exceptional, pleasant and desirable environment for the River Club at South Fork Ranches residents.

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

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

(f) Common Areas. All real and personal property owned by persons other than the Association, which may be leased by the Association, and which shall be designated Common Elements, together with those additional areas, if any, within Filing No. 1 in which the Association otherwise holds possessory or use rights for the common use and enjoyment of the Owners.

(g) Common Elements. All real and personal property within Filing No. 1 that the Association owns or leases for the common use and enjoyment of the Owners, including the General and Limited Common Elements described as follows:

(i) General Common Elements. All real and personal property within Filing No. 1 that the Association owns or leases which is not a Limited Common Element. The General Common Elements in that portion of Filing No. 1 are described as General Common Element Tracts 1 through 4 on the Subdivision Plat for Filing No. 1, including both Greenbelt General Common Elements and Motor Court General Common Element as follows:

(1) Greenbelt General Common Elements. A General Common Element designated for landscape improvements to include, without limitation, trees, hedges, plantings, shrubs, sod or grass, or landscape bark or rock to enhance the exceptional, pleasant and desirable environment of the River Club at South Fork Ranches. The Greenbelt General Common Elements are described as “Greenbelt General Common Element Tracts 1, 2, 3 and 4” on the Subdivision Plat for Filing No. 1, and are depicted as a Greenbelt General Common Element on the Plat for this Declaration.

(2) Motor Court General Common Element. A General Common Element which shall be paved and maintained in a condition adequate for motor vehicle traffic and parking. The Motor Court General Common Element is described as “Motor Court General Common Element Tracts 1-12” on the Filing No. 1, and is depicted as a Motor Court General Common Element on the Plat for this Declaration.

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

(h) Common Expense Assessments. All assessments made by the Association to the Owners of Units whether Improved or Unimproved as further described below for the River Club at South Fork Ranches Common Expenses, which shall include, without limitation, the following items levied against a particular Owner of a Unit:

- (i) each Owner's allocated share of the Common Expenses,
- (ii) each Owner's share of any Special Assessments;
- (iii) each Owner's share of any established reserve or surplus fund for insurance deductibles and general routine maintenance and repairs of the Common Elements, the Common Areas and the Improvements to the Units that the Association will install or maintain in accordance with this Declaration.

(i) Common Expenses. All expenditures made and all liabilities incurred by or on behalf of the Association to fulfill the obligations contained in this Declaration, together with any allocation to reserves. Default Assessments shall not be deemed to be Common Expenses for purposes of this Declaration. Common Expenses shall include, without limitation, the following:

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

(ii) All other expenses of administering, servicing, conserving, managing, securing, maintaining, cleaning, repairing or replacing the Common Elements, or to the extent provided for herein any Common Areas, as may be approved by the Declarant or the Executive Board;

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

(iv) Snow removal for the Common Elements, Common Areas as necessary and for the Units;

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

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

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

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

(j) County. Rio Grande County, Colorado.

(k) Covenants. All agreements, restrictions, reservations, conditions, terms, easements, and rights-of-way set forth or referenced in this Declaration as it may be amended from time to time, or in the Association Governing Documents or in any other related agreement or document provided to River Club at South Fork Ranches residents governing the ownership, occupancy, use or enjoyment of Units within Filing No. 1.

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

(m) Declaration. This Declaration, and any and all duly executed amendments, supplements, or additions to this Declaration recorded in the County's real property

records, including any maps or subdivision plats from time to time relating to Filing No. 1 which are recorded in the County's real property records.

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

(o) Design Guidelines. Collectively, all written design and development guidelines, policies, application and review procedures and fee schedules, and all architectural controls which apply to all construction and other improvement activities within Filing No. 1. Design Guidelines may be enacted by the Design Review Committee in accordance with this Declaration. River Club at South Fork Ranches shall be governed by both the Design Guidelines and the Master Association Design Guidelines as they may be periodically revised or amended.

(p) Design Review Committee. The Committee created by the Declarant for the purpose of establishing architectural control over River Club at South Fork Ranches to insure proper, appropriate and harmonious development and improvement, including the enforcement of the Design Guidelines, Owner's maintenance responsibilities and other provisions of the Governing Documents.

(q) Single-Family Residential Unit. A Unit upon which a home has been constructed and a certificate of occupancy issued, which is intended to be owned and occupied by a single family, but which may be part of a duplex or other similar structure.

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

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

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

(u) First Mortgagee. A bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, mortgage banker, agency of the United States Government; the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other Person, including without limitation Declarant, which holds a First Mortgage.

(v) Governing Documents. The documents which govern the operation of the Association and/or the Master Association, as applicable, including without limitation the following documents: (i) the articles of incorporation; (ii) the collective rules and regulations; (iii) the collective design guidelines; (iv) the Plats; (v) this Declaration and the Master Declaration, and (vi) any other documents adopted by the Association and/or the Master Association in accordance with each entity's respective declarations, articles of incorporation or bylaws to govern their respective affairs, as any of the foregoing may be amended from time to time. Each and every provision of the Master Association Governing Documents and the Governing Documents shall be given the force and effect as if set forth in this Declaration. If there is any inconsistency between the provisions of this Declaration and the provisions of any of the other Governing Documents, the provisions of this Declaration shall govern and control. If there is any inconsistency between the provisions of this Declaration and the provisions of any of the other Master Association Governing Documents, the most restrictive provision shall control.

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

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

(y) Landscaping. Landscaping shall mean all landscape improvements made within Filing No. 1. The Association shall be responsible for all Landscaping except as otherwise specifically provided in this Declaration. All Landscaping shall conform to the Landscaping Requirements.

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

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

(z) Plat. Plat shall mean the plat depicting the Units and the Common Elements as recorded in the real property records of Rio Grande County, Colorado, as amended from time to time.

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

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

(cc) Master Association Landscape Requirements. Collectively, any Master Association landscape design and review requirements, if any, as they may be amended from time to time.

(dd) Master Association Rules and Regulations. Collectively, all rules, regulations, policies, procedures and guidelines of the Master Association, as any of said items may be adopted and amended from time to time by the Master Association's Board of Directors pursuant to the Master Declaration, the Master Association Articles of Incorporation and the Master Association Bylaws.

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

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

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

(hh) Special Assessments. Assessments imposed by the Association in accordance with Section 7.6 below.

(ii) Turnover Date. The earliest to occur of the following: (i) the date that is sixty (60) days after the date that seventy-five percent (75%) of the maximum number of Units that may be created within Filing No. 1 have been conveyed to Unit Owners other than Declarant; or (ii) the date that is one (1) year after the last conveyance of a Unit by the Declarant in the ordinary course of business; or (iii) one (1) year after any right to add new Units was last exercised.

(jj) Unit. Unit shall mean a physical portion of Filing No. 1 which is designated for separate ownership or occupancy by an Owner, the boundaries of which are

depicted upon the Plats and on the planned community Plat filed with this Declaration. The Units shall be subject to one or more party wall agreements with adjacent Units.

**ARTICLE 2.**  
**GENERAL STATEMENT OF COVENANTS**

2.1 **Covenants Bind Filing No. 1.** Filing No. 1 shall be held, sold, and conveyed subject to the Declaration and the Master Association Declaration for the purpose of protecting the value and desirability of Filing No. 1 and any other purposes incidental thereto, and the Declaration and Master Association Declaration shall run with the land and shall be binding on all parties having any right, title or interest in Filing No. 1 or any part thereof from time to time, and shall inure to the benefit of each Owner thereof and each Owner's heirs, personal representatives, successors and assigns, and to the Association.

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

- (a) Any restriction or limitations contained in the Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying Common Elements to the Association;
- (c) Any restrictions or limitations imposed by the County or the Districts, or any one of them, to the extent that the Common Area(s) in question are owned, operated and/or maintained by the County or such District(s);
- (d) The right of the Association to exercise all powers and duties pursuant to Article 5 below and pursuant to any other applicable provisions of the Governing Documents;
- (e) The right of the Executive Board to adopt and amend, from time to time, Rules and Regulations concerning all or any portion of Filing No. 1 and any Improvements located thereon, as the Association may determine is necessary or prudent;
- (f) The right of the Association to enter into and execute contracts with any party for the purpose of providing management, maintenance or other services for the Common Elements, the Common Areas or otherwise governing their use and operation;
- (g) The right of the Association to grant permits, licenses and easements over the Common Elements for utilities, roads, and other purposes deemed appropriate by the Executive Board;
- (h) Subject to the Act, the right of the Association to dedicate or transfer all or any part of the Common Elements;
- (i) The right of the Association to mortgage or otherwise encumber any or all of the real or personal property owned by it as security for money borrowed or debts incurred, subject to the approval requirements set forth below and in the Act; and

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

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

### **ARTICLE 3. COMMON ELEMENTS AND COMMON AREAS**

3.1 **Description of Common Elements and Areas.** The Common Elements are shown as “Common Element Tracts” on the Plat and may be further described thereon. The Limited Common Elements are shown as “Limited Common Elements” on the Plat and may be further described thereon. Any Common Area dedicated to or maintained by Rio Grande County or any District shall be shown as a “Common Area Tract” on the Plat. Any declaration of annexation or amendment to this Declaration pursuant to which any additional property is made a part of Filing No. 1 in accordance with Article 14 below shall identify the Common Elements and the Common Areas to be located therein.

3.2 **Maintenance of Common Elements and Common Areas:** The Association shall be responsible for the maintenance, repair, replacement, operation, management and control of all Common Elements and any Common Areas that are not operated and maintained by the Master Association, or one or more of the Districts. The Association shall not be responsible for the maintenance, repair, replacement, operation, management or control of those Common Areas for which the Master Association or one or more of the Districts provides such services. The Association may from time to time determine that the Master Association or the responsible District is not maintaining Master Association Common Areas or the Common Areas in the condition contemplated by this Declaration or any of the Governing Documents. If the Association determines that the Master Association Common Area or the Common Area is not being adequately maintained by the Master Association, one or more of the Districts charged with such responsibility, as the case may be, the Association may undertake such maintenance, repair, replacement, operation or management to ensure that these Improvements meet the standards provided for in this Declaration, and in the Design Guidelines. The costs associated therewith shall be borne by the members of the Association as a Common Expense.

### **ARTICLE 4. OPERATION OF THE ASSOCIATION**

4.1 **Formation.** The Association has been formed as a Colorado non-profit corporation. The Association shall have the duties, powers and rights set forth in this Declaration, the Articles of Incorporation, the Bylaws and the other Governing Documents. The Association's affairs shall be managed by the Executive Board. Subject to the provisions of the Act, the Declarant shall have the right to appoint and to remove a majority of the members of the Executive Board; provided however that sixty (60) days after Declarant conveys twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, twenty-five percent (25%) of the members of the Executive Board (minimum of one) shall be elected by the

Unit Owners other than the Declarant, and, upon Declarant's conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarant, thirty-three and one-third percent (33-1/3%) of the members of the Board shall be elected by the Unit Owners other than the Declarant.

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

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

## **ARTICLE 5. THE ASSOCIATION**

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

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

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

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

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

(d) The Association shall have all of the powers, authority and duties necessary and proper to operate, manage, maintain, repair, reconstruct, replace, improve, and otherwise deal with Unit Landscaping and the specific Unit maintenance which the Association has assumed responsibility under this Declaration, and the right to promulgate reasonable Rules and Regulations related to the Units which do not conflict with any of the provisions of this Declaration or the other Governing Documents.

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

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

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

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

(i) The Association shall enforce the requirements of the Design Guidelines and the Rules and Regulations as it deems necessary to ensure the proper use, development,

improvement, repair, maintenance and replacement of real and personal property within Filing No. 1, and, subject to the provisions of Article 8 below, to appoint persons to serve on the Design Review Committee.

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

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

(b) Subject to Section 5.9 below, by commencing and maintaining actions and suits: (i) to recover damages; or (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, the provisions of the Association and Master Association Governing Documents by mandatory injunction or otherwise;

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

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

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

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

**5.4 Association Agreements.** The Association shall have the power to execute any agreement for professional maintenance or management of all or any portion of Filing No. 1, or any contract with the Declarant to provide such services. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee or a penalty upon not more than thirty (30) days written notice.

**5.5 Indemnification.** To the full extent permitted by law, all of the officers and members of the Executive Board and any other validly-formed committee members of the Association shall be indemnified by the Association against all expenses and liabilities, including

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

**5.6 Governmental Interests.** Declarant has reserved the right to designate portions of Filing No. 1 for fire, police, water, drainage, utility facilities, parks, and other public facilities, as provided below and subject to the provisions of the Act. These sites may include Common Elements, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site if so directed by Declarant. The sites may include other property not owned by the Declarant, provided the owner consents thereto.

**5.7 Right to Notice and Comment.** Before the Executive Board amends the Bylaws, or whenever the Governing Documents require that an action be taken after "notice and comment," and at any other time the Executive Board determines, the Owner or Owners affected by the action in question shall have the right to receive written notice of the proposed action and the right to comment orally or in writing. Notice shall be given to each affected Owner in writing, delivered either personally or by mail to their respective addresses as they appear in the records of the Association, and additional notice may be provided in a newsletter or similar publication which is routinely circulated to all Owners. Any required notice shall be given not less than three days before the proposed action is to be taken. The Notice shall invite comment to the Executive Board, orally or in writing, before the scheduled time of any meeting.

**5.8 Disclaimer Regarding Security.** The Association may, but shall not be obligated to, maintain or support certain activities within Filing No. 1 that are designed to make occupancy of Filing No. 1 more secure than it otherwise might be. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within Filing No. 1, nor shall any of them be held liable for any loss or damage by reason of failure to provide security or by reason of the ineffectiveness of any security measures that might be undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in any case prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform all Related Users of the terms of this Section 5.8. Further, each Owner and Related User, and every other Person entering upon Filing No. 1, expressly agrees that he, she or it assumes all risks of loss or damage to persons and to property resulting from the acts or omissions of third parties.

## 5.9 Compliance with Declaration

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

(b) In all instances of noncompliance any action against an Owner for failure to comply with the Governing Documents shall be initiated by the Association through the Executive Board. In no event shall an individual Owner have the right to initiate an action for violation of the Governing Documents unless the Owner obtains the prior written consent of the Executive Board.

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

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

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

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

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

(iv) The Association shall only be authorized to expend funds for such proceeding in excess of the amount contemplated by the Approved Litigation Budget after an amended budget has been approved in accordance with the procedures specified in this Section 5.9(d).

(e) All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with Section 5.9(d) shall be funded by means of a Special

Assessment, and in no event may the Association use reserve funds or incur any indebtedness in order to pay any costs and expenses incurred for such purpose.

(f) If the Association commences any action or proceeding against a particular Owner or particular Owners requiring the approval of the Owners in accordance with Section 5.9(d), the Owner or Owners who are being sued shall be exempted from the obligation to pay the Special Assessment levied for the purpose of paying the costs and expenses of such action or proceeding.

(g) The requirements set forth in Section 5.9(d) through Section 5.9(f) hereinabove shall not apply to any action or proceeding to collect or otherwise enforce Assessments and any related fines, late charges, penalties, interest or costs and expenses, including reasonable attorneys' fees, nor shall said provisions apply to any action to enforce any decision or requirements of the Design Review Committee, including an action for emergency injunctive relief. The cost of any such action shall be assessed against the offending Owner as a Default Assessment.

**5.10 No Right of Action Against the Association or Board.** No person shall obtain by virtue of this Declaration any right or cause of action against the Association or the Executive Board or its management arising as a result of the enforcement or lack of enforcement of this Declaration.

## **ARTICLE 6. UNIT MAINTENANCE RESPONSIBILITIES**

### **6.1 Owner's Responsibility.**

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

(b) Owner Installed Landscaping. Subject to Design Review Committee approval, any Owner may design, install and maintain such additional Landscaping within the boundaries of the Owner's Unit as may be deemed appropriate by the Design Review Committee. Any Landscaping exceeding the Landscaping to be installed and maintained by the Association shall be installed and maintained by the Owner at the Owner's sole cost and expense, or at the option of the Executive Board, shall be installed and/or maintained by the Association with the cost thereof paid by the Owner of the benefited Unit as a supplemental Common Expense Assessment against the Owner's Unit. Any Owner installed and maintained Landscaping shall meet or exceed the standards set forth in the Landscaping Requirements. Prior to installation of any Owner-installed Landscaping, the Owner shall provide the Design Review Committee with a full set of plans, describing in detail the proposed Owner installed landscaping (the "Landscaping Detail"). The Design Review Committee shall review the Landscaping Detail and advise the Owner of its acceptability within thirty (30) days of receipt of

the complete Landscaping Detail. A Landscaping Detail submittal shall be deemed approved unless the Design Review Committee notifies the Applicant of disapproval or provides the Applicant with a request for additional information or materials within thirty (30) days after the date that the Design Review Committee received the complete Landscaping Detail. The Design Review Committee's review and approval of a Landscaping Detail shall be in addition to, and not in lieu of the Master Association's review and approval of same.

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

(a) Landscaping. The Association shall design, install and maintain Landscaping for each Unit located within Filing No. 1. The Landscaping shall be designed, installed and maintained in accordance with the Landscaping Requirements and Design Guidelines to include some or all of the following:

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

(ii) Irrigating, seeding or sodding of lawn areas within each Unit;

(iii) Designing and installing flower beds, if appropriate, within each Unit;

(iv) Installing shrubs and trees within each Unit;

(v) Maintaining and replacing, as necessary, landscaping materials, including trees, shrubs and flower beds (if applicable) within each Unit;

(vi) Maintaining, winterizing, repairing and replacing, as necessary, the irrigation and sprinkler system serving each Unit; and

(vii) Repairing or replacing any damage to Landscaping, subject to each Owner's obligation to separately pay for any Landscaping damage caused by the negligent or willful conduct of such Owner or Owner's Related User.

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

(i) Constructing, installing and maintaining any approved fencing including any fencing located in or across any Unit or at the boundary between any Units;

(ii) Removing snow from the Common Elements, Motor Court and from any Common Areas to the extent snow removal services are not provided by the County,

the Master Association, or one of the Districts. Removal of snow from rear decks shall be the Owner's responsibility;

(iii) Clean-up and removal of trees, branches or other debris deposited as a result of a storm; and

(iv) Periodic clean up and removal of leaves and debris on a seasonal basis.

(c) Unit Exterior Maintenance. The Association shall maintain, from time to time as the Association may reasonably determine, all non-structural exterior Improvements, including the repainting and resurfacing of exterior surfaces of structures, including roofing materials, snow-melt systems, area drains, exterior siding, stone, trim around doors and windows, surfaces of garage doors, external vents and flues and glass surfaces.

**6.3 Standard of Performance.** Except as otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the quality standards from time to time existing within River Club at South Fork Ranches, and the Governing Documents enacted for both Associations. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of property which it does not own, except to the extent that the Owner or the Owner's Related Users have been negligent in the performance of their maintenance responsibilities.

## **ARTICLE 7. COVENANT FOR COMMON EXPENSE ASSESSMENT**

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

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

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

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

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

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

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

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

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

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

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

(a) The Common Expense Assessment shall be made on an annual basis against all Units and shall be payable as determined by the Executive Board. The Common Expense Assessment shall be based upon the Association's advance budget of the cash requirements estimated by the Association to be required to provide for the administration and performance of its duties during the Assessment year in question. A summary of the budget shall be submitted by ordinary first-class mail to the Owners within thirty (30) days after its adoption by the Executive Board along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the budget summary to the owners. The Executive Board, in its discretion, may mail the budget summary together with a written ballot and information sufficient for the Owner to vote for or against the adoption of the proposed budget. Unless at that meeting, or by written ballot, Members entitled to cast eighty percent of the Members of the Association reject the budget, the budget is ratified. Common Expense Assessments shall be due and payable on a quarterly (3 month) basis, due on the first

(1<sup>st</sup>) day of each quarter (January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup>) and delinquent after the fifth (5<sup>th</sup>) day of each quarter, or in such other manner as may be determined by the Executive Board. The Common Expense Assessments will begin on the first (1<sup>st</sup>) day of the calendar month following the calendar month in which the conveyance of the first Unit to a person other than Declarant occurs, or at such later date as Declarant determines. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the same when and as assessed.

(b) In addition, the Declarant or the Association shall require the first Owner of each Unit other than the Declarant to make at the time of purchase, a non-refundable contribution to the Association in an amount equal to one-fourth (1/4) of the Annual Assessment in effect or Annual Assessment proposed for the Unit at the time of Closing to establish a fund of working capital to defray the initial costs to establish the community in the condition contemplated by this Declaration (the "Working Capital Fund"). Upon termination of Declarant control of the Association the Declarant shall transfer control of such funds to the Association, if not sooner transferred. Payments made to the Working Capital Fund shall not be considered advance payments of regular Assessments. Funds in the Working Capital Fund shall be segregated and separately accounted for the use and benefit of the Association at the Board's discretion. Upon transfer of the Unit, the Owner (including the Declarant if a contribution if a contribution to the Working Capital Fund has been made) shall be entitled to a credit from his transferee for the unused portion of the contribution to the Working Capital Fund. The Declarant shall not use any of the Working Capital Fund to defray its expenses, reserve contributions, or construction costs or to make up for any budget deficits.

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

**7.6 Special Assessments.** The Executive Board may at any time and from time to time, determine, levy and assess a Special Assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition,

replacement or maintenance of a capital improvement and any fixtures or personal property related thereto, any acquisition of real property, and to fund, on an interim basis, any expenses incurred in pursuit of the actions described in Section 5.9(g) and 7.7 below. Any such Special Assessment shall be due and payable as determined by the Executive Board. The term "capital improvements" as used herein shall mean the acquisition, improvement, development, maintenance, repair or replacement of Common Elements, or the improvement, development, maintenance or repair of the Landscaping of any Unit determined by the Executive Board, upon the advise of the Design Review Committee, as necessary to maintain the superior condition of River Club at South Fork Ranches. If the improvement, development, maintenance or repair for any Unit benefits less than all of the Unit Owners, the Executive Board may assess the Special Assessment against the Unit or Units the Executive Board determines received the benefit of the capital improvement expenditure. Notice in writing setting forth the amount of such Special Assessment allocable to any particular Unit and the due date for payment thereof shall be given to the Owner(s) of the affected Unit(s) not less than thirty (30) days prior to such due date.

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

Unit which accrued prior to the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

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

7.9 **Declaration is Notice.** Subject to the requirements contained in the Act, recording of this Declaration constitutes record notice and perfection of the Assessment lien. No further recordation is required. The Executive Board, at its discretion, may prepare and record in the County's real property records, a written notice setting forth the amount of any unpaid indebtedness, the name of the Owner, a description of the Unit, and such other information, if any, as the Association may deem appropriate.

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

## **ARTICLE 8. DESIGN REVIEW**

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

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

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

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

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

(e) Reconstruction of any Improvements.

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

8.3 **Modification after Occupancy.** Any Improvements proposed for construction after the issuance of a final Certificate of Occupancy for a Unit shall be subject to review and approval by the Declarant until the Turnover Date, and thereafter by the Design Review Committee in accordance with the Design Guidelines. The Declarant, at its discretion, may delegate the review of any requested Unit modifications to the Design Review Committee prior to the Turnover Date.

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

8.5 **Design Review Committee.** The Design Review Committee shall consist of three (3) persons. Until the Turnover Date, or such earlier date as Declarant may elect in writing to relinquish such power, Declarant shall appoint all members of the Design Review Committee, and may remove and replace any such members as it deems appropriate. After expiration or termination of Declarant's appointment rights, the Design Review Committee shall be comprised of Owners, and to the extent practicable, shall take into account any special skill, education or qualifications, including engineering, architectural or design experience, and the members of the Design Review Committee shall then be appointed by the Executive Board. Until the Turnover Date, Declarant, in its sole discretion, may at any time grant all or any portion of its power to appoint the members of the Design Review Committee to any successor Declarant, or to the Association. From and after the Turnover Date, the terms of the members of the Design Review Committee shall be staggered, and shall terminate at different dates, so as to provide reasonable continuity to the design review process.

8.6 **Guidelines and Procedures General.** Declarant shall prepare the initial Design Guidelines, which thereafter may be amended in whole or in part by a majority of the Design Review Committee. For so long as Declarant owns any Units, any such amendment shall require the written approval of Declarant. Any amendments to the Design Guidelines shall apply to modifications commenced after the date of such amendment only and shall not apply to require modifications to, or removal of, structures previously approved once the approved construction or modification has commenced. The Design Guidelines may contain general provisions applicable to all of River Club at South Fork Ranches, as well as specific provisions which vary from one portion of River Club at South Fork Ranches to another depending upon location, unique characteristics, and intended use. The Design Guidelines may also include the procedures, materials to be submitted and additional factors that will be taken into consideration in connection with the approval of any proposed Improvement. The Design Guidelines may

specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part, and may waive the requirement or exempt Improvements from the requirement for approval if such approval is not reasonably required to carry out the purposes of this Declaration. The Design Guidelines, as the same shall be amended from time to time, need not be recorded, but shall be considered incorporated herein by reference and shall be enforceable as though set forth in full. The Owners agree and understand that in addition to the Design Guidelines, the construction and modification of Improvements within River Club at South Fork Ranches shall be subject to and governed by the requirements set forth in the Master Association Design Guidelines. Each Owner, by accepting to deed for any Unit, shall be deemed to have agreed to comply with the requirements of the Master Association Design Standards, as the same may be interpreted and enforced by the Master Associations' respective Design Review Committees.

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

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

**8.9 Decision of Committee.** The decision of the Design Review Committee shall be made within forty five (45) days after the date that it receives the complete Modification Application and any additional materials it may require, unless such period of time is extended by mutual agreement of the Design Review Committee and the Applicant. The decision shall be

in writing and, if the decision is to disapprove the Modification Application, the reasons shall be stated. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee. The approval of the Design Review Committee shall not constitute approval by the Master Association Design Review Committee, both of which approvals are a condition precedent to the commencement of any construction, nor shall such approval relieve the responsibility of any Owner from obtaining all necessary building permits or other governmental approvals.

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

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

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

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

**8.14 Inspection.** The Design Review Committee or its representative shall have the right to inspect any work conducted in accordance with an approved Modification Application prior to or after completion. If, as a result of its inspections or otherwise, the Design Review Committee determines that any modification has been commenced without obtaining the approval of the Design Review Committee, or if it determines that the modification is not being completed or has not been completed in conformity with the Modification Application and any conditions of approval, the Design Review Committee shall notify the Applicant in writing of such determination. The notice shall specify the particulars of the noncompliance, and shall require the Applicant to take such action as may be necessary to remedy the noncompliance and may, at the election of the Executive Board, be recorded in the County's real property records. If for any reason other than the Applicant's act or omission, the Design Review Committee fails to notify the Applicant of any noncompliance within forty-five (45) days after the Design Review Committee's receipt of a written notice of completion from the Applicant, the modification shall be deemed to be in compliance with this Declaration. The Master Association shall have the

rights of inspection and final acceptance of the modification as set forth in the Governing Documents.

**8.15 Enforcement.** Any modification placed, installed or constructed, in violation of this Article shall be deemed to be nonconforming. Upon written request from the Design Review Committee, the Owner in violation shall, at his or her own cost and expense, remove the modification and restore the Unit in question to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as requested, Declarant and the Association, and their respective designees, shall have the right to remove the violation and restore the Unit to substantially the same condition as previously existed, or to pursue all legal and equitable remedies available to enforce the provisions of this Article. All costs and attorneys' fees, together with interest on all sums expended by the Association at such rate as may be charged by it, may be assessed against such Unit and collected as a Default Assessment. Additionally, any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Association from performing any future work within River Club at South Fork Ranches upon notice and an opportunity to be heard.

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

**8.17 Variances.** The Design Review Committee may authorize variances from compliance with any of the Design Guidelines when circumstances so warrant. Such variances must be evidenced in writing and must be signed by at least a majority of the members of the Design Review Committee. If a variance is granted, no violation of this Declaration or the other Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted, provided the Applicant complies with the terms of the variance. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and particular provision in the instance covered by the variance. (Again, this does not mean the appropriate government agencies have approved such variance. )

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

**ARTICLE 9.**  
**RESTRICTIVE COVENANTS**

9.1 **Owners' Acknowledgment.** All Owners and Related Users of Units are given notice that use of their Units is limited by provisions of the Governing Documents, including without limitation the Master Declaration and this Declaration, as they may be amended from time to time. Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that the use, enjoyment and marketability of his or her Unit may be affected by such provisions, and that the covenants, conditions and restrictions affecting the use and occupancy of a Unit may be amended from time to time in accordance with the terms of this Declaration and the other Governing Documents. Every Restrictive Covenant defined in relevant provisions of the Master Association shall apply to the Association.

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

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

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

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

(d) Activities Within Dwelling. No rule shall interfere with the activities carried on within the confines of dwellings on the Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners that may pose a threat to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units, or that create an unreasonable source of annoyance.

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

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

(a) Subdivision. Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit, shall be prohibited without the prior written consent of Declarant prior to the Turnover Date, and without the prior written consent of the Association subsequent to the Turnover Date;

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

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

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

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

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

(d) Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, including short term or vacation rentals to third parties unrelated to Owner. Notwithstanding contained herein to the contrary, no Owner shall use or permit its Unit to be used as part of a fractional ownership program, "time share" or similar ownership or rental program. To the extent permitted under applicable law, Owners shall have the right to lease their Units only under the following conditions:

(i) All leases for more than 10 days shall be in writing;

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

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

(e) Nuisances. Any use, activity, or practice that is the source of or unreasonably interferes with the peaceful enjoyment or possession of a Unit or any portion of the

Common Elements or any portion of the River Club at South Fork Ranches community shall be prohibited. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over River Club at South Fork Ranches or any portion thereof shall be observed and may be enforced by the Association as if the same were contained in the Governing Documents. In no event shall the activities of the Declarant which are reasonably necessary to the exercise of the rights granted to them by this Declaration or under applicable laws be considered a "nuisance" unless such activities unreasonably interfere with any Owner's use and enjoyment of such Owner's Unit.

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

(g) Waste / Trash Removal. Owner shall be responsible for arranging and disposing of all trash generated by or through use of their Unit. Trash containers shall be of a size and shape approved or accepted by the appropriate trash removal companies. Containers shall only be set out for collection after 8:00pm on the night prior to scheduled collection and shall be removed and placed out of sight by 8:00pm on the day of scheduled collection.

(h) Animals.

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

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

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

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

(i) Vegetation. Owners may not engage in any activities that materially disturb or destroy the vegetation, wildlife or air quality within the River Club at South Fork Ranches community, or which use excessive amounts of water, or which result in unreasonable

levels of sound or light. An Owner may remove or replace dead or diseased vegetation on his or her Unit, however, an Owner may only modify the Landscaping of his or her Unit with the advance approval of the Design Review Committee obtained in accordance with the Design Review Standards.

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

(k) Satellite Dishes; Exterior Apparatus. No owner shall install or allow to be installed on the exterior of any Unit any antenna, satellite dish or other equipment or apparatus used for television, communication systems or other purposes. Each Unit shall have a location designated and pre-wired for the installation of any such equipment in the original building plans and specifications for such Unit.

#### 9.4 Use Restrictions.

(a) Parking.

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

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

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

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

**ARTICLE 10.**  
**EASEMENTS AND RESERVATIONS**

10.1 **Easements of Encroachment.** Reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachments, are hereby granted and created between each Unit and any adjacent Common Elements and between adjacent Units due to the unintentional placement or the settling or shifting of any Improvements constructed, reconstructed, or altered thereon to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner. All real property within Filing No. 1 shall be subject to all easements set forth herein, as shown on the Plat or any other plat, those of record, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act, and an easement for maintenance of any such encroachment) , and otherwise as set forth is in this Article 10.

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

10.3 **Easements Over Common Elements.** The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Elements for the purposes of enjoyment, use, access, and development of all or any portion of the Filing No. 1. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused by it or its agents or employees to the Common Elements as a result of vehicular traffic connected with the development of River Club at South Fork Ranches.

10.4 **Easements Over Unit Areas.** Declarant hereby reserves, for itself, the Association and its duly authorized agents, representatives, and employees, access and maintenance easements upon, across, over, and under all of the Units to the extent necessary to install, maintain and repair the Unit Landscaping and Common Element Landscaping and to maintain those Improvements that the Association has expressly undertaken the responsibility to

install or maintain in order to ensure River Club at South Fork Ranches is maintained in the superior condition contemplated in this Declaration and the Governing Documents. Any damage caused by the Association's entry onto a Unit for the purposes specified herein shall be repaired by the Association as a Common Expense. To the extent damage to a Unit is caused by the willful misconduct of any authorized agent, representative or employee, the Association shall use reasonable efforts to recover the costs associated with the repair from the party engaging in the misconduct.

**10.5 Right of Entry.** In addition to the enforcement rights the Association is granted in Section 5.3 and Article 8 above, the Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to the Governing Documents, and to inspect for compliance with this Declaration and the other Governing Documents, which right may be exercised by any member of the Executive Board, the Association and its officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and any damage caused by entry shall be repaired by the Association as a Common Expense. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Executive Board. In no event will the provisions of this Section authorize entry into any dwelling without the prior consent of the Owner.

## **ARTICLE 11. MORTGAGEE PROVISIONS**

**11.1 Notices of Action.** A First Mortgagee that provides a written request to the Association stating the name and address of such First Mortgagee and the street address of the Unit to which its First Mortgage relates (any such First Mortgagee is referred to as an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of River Club at South Fork Ranches or which affects the Unit encumbered by the First Mortgage held, insured, or guaranteed by the Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by the Unit subject to the First Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a First Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

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

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

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

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

(d) Fail to maintain insurance as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Elements losses for other than the repair, replacement, or reconstruction of such property.

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

**11.3 Other Provisions for First Mortgagees.** To the extent permitted under Colorado law:

(a) Any restoration or repair of any of the Common Elements after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of First Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of First Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to First Mortgages held by such Eligible Holders are allocated.

(c) No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

(d) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the Mortgagees or any other person or entity holding a debt which encumbers such Owner's Unit.

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

(f) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Executive Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

(g) HUD/VA Approval. To the extent required by said agencies, until the Turnover Date the following actions shall require the prior approval of the Federal Housing Administration or the United States Department of Veterans Affairs, if either such agency is insuring or guaranteeing Mortgages that encumber any portion of River Club at South Fork Ranches:

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

## **ARTICLE 12. INSURANCE/CONDEMNATION**

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

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

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

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

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

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

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

**12.4 Fire and Casualty Insurance.** Each Owner shall be responsible for all insurance covering loss or damage to any and all improvements existing on the property insured against loss by fire, hazards included within the term "special perils (commonly referred to as all-risk)", personal property in his Unit in accordance with Section 38-33.3-313(7), C.R.S., and liability for injury, death or damage occurring, or originating from, inside his Unit. Any such policy shall name the Association, the Executive Board, the manager or managing agent, if any, the officers of the Association, the Declarant, and any other Owners of adjoining Units, as additional insureds, and shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

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

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

**12.7 Association Officers' and Directors' Personal Liability Insurance.** The Association may obtain an expansive form of officers' and directors' personal liability insurance to protect the officers, directors and committee members from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

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

**12.9 Allocation of Insurance Costs and Expenses.** All costs and expenses borne by the Association in compliance with this Section, including without limitation insurance premiums, and all costs and expenses borne by the Association in connection with insured and uninsured losses to persons or property within River Club at South Fork Ranches, repairs and replacement of insured and uninsured property, and claims settlement or adjustment shall be considered Common Expenses.

**12.10 Condemnation.** Condemnation of all or any portion of River Club at South Fork Ranches shall be governed by the provisions of the Act, as it may be amended from time to time.

### **ARTICLE 13. RESERVATION OF DECLARANT RIGHTS**

**13.1 Special Declarant Rights.** Subject to the provisions and restrictions contained in the Act, Declarant hereby reserves the power and authority to exercise and engage in the following rights at any time from the Effective Date of this Declaration until the Turnover Date:

(a) Conveyance for Governmental Interests. The right to designate sites within any portion of River Club at South Fork Ranches for fire, police, water, drainage, and utility facilities, parks, and other public facilities.

(b) Completion of Improvements. The right to construct and install Improvements on the Common Elements and Units owned by the Declarant.

(c) Exercise of Development Rights. The right to exercise any expansion or other rights reserved in Article 14 of this Declaration.

(d) Sales Management and Marketing. The right of Declarant to maintain sales and management offices upon any Unit owned by it or upon any of the Common Elements, the right to maintain advertising and promotional signs and banners, the right to maintain model homes and sales and management offices on any Unit owned by the Declarant, as applicable.

(e) Construction Facilities. The right of the Declarant and its respective employees, representatives, agents, and contractors to maintain temporary construction facilities and construction materials staging yards, and other facilities required during the construction of Improvements to, and sale of, the Units. The location of all such facilities shall be subject to approval in accordance with the Master Declaration.

(f) Construction Easements. The right of Declarant to use easements through the Common Elements for the purpose of making Improvements within River Club at South Fork Ranches, and the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations under this Declaration, all as more particularly described in 14.5 below.

(g) Merger. The right to merge or consolidate River Club at South Fork Ranches with another common interest community.

(h) Control of Association and Executive Board. The right to appoint or remove any Officer of the Association, any Executive Board member, or any Design Review Committee member as provided by this Declaration.

(i) Amendment of Declaration. The right to amend the Declaration and any Plat in connection with the exercise of any right reserved by Declarant in accordance with this Declaration.

(j) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking, utility, drainage, recreation and Common Elements and Common Area facilities, and any other amenities for the benefit of the Owners and/or the Association.

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

Unless required by the Act, each of the foregoing rights and activities may be exercised and conducted by Declarant without the requirement of any consent or approval of the Association, the Executive Board, the Design Review Committee, or any other Person whose consent or approval would be required by the terms of this Declaration or the other Governing Documents in the absence of this Article 13.

**13.2 Subject Real Estate.** The rights reserved by Declarant pursuant to this Article 13 and Article 14 below shall apply to all of Filing No. 1, including without limitation any portion of any additional property that is made subject to the terms of this Declaration.

**ARTICLE 14.**  
**DEVELOPMENT AND WITHDRAWAL RIGHTS**

14.1 **Development and Withdrawal Rights.** Declarant expressly reserves the right, at any time after the Effective Date of this Declaration until termination of the Development Rights as defined below to:

- (a) Add real estate to the common interest community;
- (b) Create additional Units, Common Elements (including General Common Elements or Limited Common Elements);
- (c) Subdivide Units;
- (d) Relocate boundaries between Units;
- (e) Convert Units into Common Elements, or
- (f) Convert Common Elements into Units, on all or any portion of Filing No. 1, except those Units sold.

14.2 **Exercise of Development Rights.** Declarant may exercise its rights in accordance with, this Article on all or any portion of Filing No. 1 in whatever order or sequence that Declarant, in its sole discretion, determines. Subject to the limitations contained in the Act, Declarant expressly reserves the right to withdraw all or any portion of the property from River Club at South Fork Ranches by recording a document evidencing such withdrawal in the real property records of Rio Grande County, Colorado. The property withdrawn from Filing No. 1 shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of River Club at South Fork Ranches remaining subject to this Declaration. Declarant shall prepare and record in the real property records of Rio Grande County, Colorado, whatever documents are necessary to evidence such easements.

14.3 **Amendment of the Declaration.** If Declarant elects to exercise any of the rights referred in this Article 14, Declarant shall record an appropriate amendment to this Declaration which shall, among other matters, reallocate the Allocated Interests as contemplated by Article 16 below, so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units subject to this Declaration.

14.4 **Interpretation.** Recording of amendments to this Declaration in the County's real property records, shall automatically:

- (a) Vest in each existing Owner the reallocated Allocated Interests appurtenant to his or her Unit; and
- (b) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

**14.5 Rights Incident to the Construction Easement.** Declarant expressly reserves the right to perform construction work and to store materials in secure areas on Units owned by it and on the Common Elements and to the extent easement rights are granted in any additional Common Areas, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Owner or Mortgagee. Declarant reserves an easement on and through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the land not designated as reserved for future development in the Declaration or on any Plat for the purpose of furnishing utility and other services to the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within these easements anywhere in the Common Elements.

**14.6 Reciprocal Easements.** If property is withdrawn from River Club at South Fork Ranches ("Withdrawn Property"):

(a) The Owner(s) of the Withdrawn Property are hereby granted whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Common Elements within the River Club at South Fork Ranches; and the Owner(s) shall have whatever easements are necessary or desirable, if any, for access, utility service repair, maintenance and emergencies over and across the Common Elements within the Withdrawn Property, and if the owner(s) of the Withdrawn Property fail to grant such easement to the Owner(s), this Declaration shall continue to burden the Withdrawn Property for the purpose of granting the owner(s) a blanket easement over and across the Common Elements within the Withdrawn Property for access, utility service, repair, maintenance and emergencies.

(b) Declarant shall prepare and record in the County's real property records whatever documents are necessary to evidence such easements. Such recorded easements shall specify that the owners of the Withdrawn Property and the Owners shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easement(s) utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

**14.7 Termination of Development Rights.** The Development Rights reserved to Declarant, for itself, its successors and assigns, shall expire when the maximum number of Units that may be created within River Club at South Fork Ranches have been conveyed to Unit Owners other than Declarant or the date that is twenty-four (24) years after the date that this Declaration has been recorded in the County's real property records, whichever is the first to occur. The Declarant may consent to an earlier termination of its Development Rights by executing and recording an instrument in the County's real property records confirming Declarant's relinquishment of its Development Rights, and the terms and conditions applicable to the same.

**ARTICLE 15.  
AMENDMENT AND TERMINATION**

15.1 **Technical, Clerical, Typographical or Clarification Amendment.** If the Declarant, or after Turnover Date, the Executive Board, shall determine that any amendments to this Declaration, the Governing Documents or to any map or plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical errors or the clarification of a statement, then the Declarant shall have the right and power to make and execute any such amendments at any time prior to the Turnover Date, and thereafter the Executive Board shall have the right and power to make and execute any such amendments, in either event without the need for obtaining the approval of any Owners or First Mortgagees.

15.2 **Amendments Necessary to Exercise Authority of Association Documents.** In addition to the rights granted to the Declarant to execute amendments to this Declaration, the Executive Board shall have the authority to execute amendments to this Declaration, the Governing Documents, or to any map or plat which are reasonably necessary in order for the Association to perform its duties as authorized by this Declaration.

15.3 **Attorney in Fact.** In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and the Executive Board to make or consent to an amendment under this Article 15 on behalf of each Owner and holder of a First Mortgage. Each deed, First Mortgage or other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant and the Executive Board to make, execute and record an amendment under this Section.

15.4 **Amendment of Declaration by Owners.** Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in the Act and in this Declaration requiring the consent of others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be changed or repealed, and any such provision added to this Declaration at any time and from time to time upon approval of the Executive Board and at least sixty-seven percent (67%) of the votes in the Association. Notwithstanding the foregoing, however, no amendment shall be adopted nor shall any amendment be effective at anytime prior to the Turnover Date unless Declarant shall have granted its written approval to the same, and no change or repeal of any provision of this Declaration shall act to change or otherwise modify the terms of the Master Declaration unless the Master Declaration is amended in accordance with its terms for amendment.

15.5 **Amendment Required by Mortgage Agencies.** At any time prior to the Turnover Date, Declarant shall have the right to amend this Declaration, the Governing Documents, and any map or plat to the extent necessary to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, including without limitation the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association. After the Turnover Date, the Association shall have the right to execute any such amendments to this Declaration, the Governing Documents and any map or plat. Any amendment executed pursuant

to this Section 15.5 shall be effective upon the recordation in the County's real property records of a certificate, setting forth the amendment or repeal in full.

**15.6 Recording of Amendments.** To be effective, all amendments to this Declaration must be recorded in the County's real property records, and must contain evidence of approval thereof. One method of satisfying the requirement of this Section is the recordation of a certificate of the Secretary of the Association certifying that Owners representing the requisite percentage of the Units (if so required) have given their written consent to the amendment in question. The Secretary must further certify that originals of such written consents of the Owners, along with a copy of the amendment as executed and recorded, are in the corporate records of the Association and available for inspection. 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.

**15.7 Association Certification.** Amendments to the Declaration required by this Article to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

**15.8 Expenses.** All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of:

- (a) In the case of an amendment for the purpose of altering boundaries between adjoining Units, and subdivision of Units, the Owners desiring the amendment;
- (b) In the case of an amendment for the purpose of reallocating Allocated Interests recordation of new plats and maps, and exercise of Development Rights, Declarant; and
- (c) In all other cases, by the Association as a Common Expense.

**15.9 Termination.** This Declaration may be terminated upon an affirmative vote of the Owners holding (not less than) eighty percent (80%) of the Allocated Interests, provided such termination shall not be effective at anytime prior to the Turnover Date without the prior written approval of Declarant.

## **ARTICLE 16. ALLOCATED INTERESTS**

**16.1 Formula for Determining Allocated Interests.** The Common Expenses and the votes in the Association shall be allocated to each Unit. The interests allocated to each such Unit have been or will be calculated as follows:

- (a) Percentage Share of Common Expenses and Percentage Share of Ownership of Common Elements. The percentage of liability for Common Expenses shall be borne only by the Owners of Units located in River Club at South Fork Ranches on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units located within River Club at South Fork Ranches.

(b) Voting. Each Unit shall have a voting percentage equal to its percentage of liability for Common Expenses, as set forth in the preceding subparagraph 16.1(a).

**16.2 Allocation Between Improved and Unimproved Units.** In the Executive Board's discretion, and provided Declarant's consent to such determination is received if such determination is made prior to the Turnover Date, "Improved Units" (i.e., any Unit which has been improved with a completed Single Family Residence for which a temporary or permanent certificate of occupancy has issued) may be assessed differently than "Unimproved Units" (i.e., Units on which a temporary or permanent certificate of occupancy has not yet been issued for a Single Family Residence), to reflect the fact that such Unimproved Units are not using the Common Elements and to reflect the approximate differential in the cost of services provided by the Association to Improved Units as compared with Unimproved Units. In each case all Unimproved Units shall be assessed in a non-discriminatory manner based upon such portion of their respective Allocated Interests as the Executive Board (with Declarant's consent, as required in accordance with the preceding sentence) may determine; and all Improved Units shall be assessed in a non-discriminatory manner based upon their respective Allocated Interests.

**16.3 Fractional Voting Not Allowed.** Notwithstanding the number of Owners of record for any particular Unit, each Unit is entitled to exercise its voting rights in accordance with the voting percentage outlined above, which vote cannot be fractionally divided. When a Unit is owned by multiple parties the Owners shall advise the Association of the party entitled to cast the Unit vote. If the multiple Unit Owners do not agree on how the Unit vote is to be cast the vote for that Unit shall not be considered in determining the particular matter proposed or issue requiring approval.

**16.4 Reallocation.** When Units are withdrawn from, or added to, River Club at South Fork Ranches, pursuant to the provisions of this Declaration, the formula set forth in Section 16.1 above shall be used to reallocate the Allocated Interests.

## **ARTICLE 17. GENERAL PROVISIONS**

**17.1 Rights Transferable/Rights Transferred.** Any rights created or reserved under this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the County's real property records. Such instrument shall be executed by the transferor and the transferee. The rights so transferred may be then exercised without the consent of the Association, any Owner or any Mortgagee.

**17.2 Attorneys' Fees.** If an Owner or Related User fails to comply with any provision of the Governing Documents, the Association (or any person or class of persons adversely affected by the failure to comply which has the right to enforce the Governing Documents or any portion thereof as provided therein) may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counterclaims, cross-claims, and third-party claims, in any legal proceeding to enforce provisions of the Governing Documents, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorneys' fees and costs incurred in asserting or

defending the claim. In all instances, however, the court shall award the Association the fees and costs incurred by it in recovering any assessments, as provided in Section 7.8 above.

17.3 **Severability.** Should any part or parts of this Declaration be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

17.4 **Paragraph Headings.** The paragraph headings in this Declaration shall not be construed to be given undue weight in the interpretation of this Declaration.

17.5 **Notice Addresses.** Each Owner shall register his mailing address with the Association. All notices or demands affecting River Club at South Fork Ranches may be served upon an Owner by the Association or by other Owners by regular United States Mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or by personal service. All notices or demands intended to be served upon the Association or the Design Review Committee shall be sent by certified United States Mail, postage prepaid, return receipt requested, to the address of the Association as designated in the Articles of Incorporation or Bylaws of the Association or served by personal service on the Association's registered agent for service.

17.6 **Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

17.7 **Jurisdiction and Venue; Applicable Law.** This Declaration is filed in the records of Rio Grande County, Colorado, and it is agreed that the proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of this Declaration shall be in the District Court for Rio Grande County, Colorado. This Declaration shall be governed by, and shall be construed in accordance with, the laws of the State of Colorado.

17.8 **Binding Agreement.** It is understood and agreed that this Declaration shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of Declarant and each Owner.

17.9 **Reference to Ownership Interests.** Whenever in this Declaration or in the Articles of Incorporation or Bylaws of the Association reference is made to a specific percentage interest of Owners, such reference shall be deemed to mean such percentage of the total aggregate Allocated Interests of such Owners, unless the context otherwise requires, and shall not be deemed to mean a percentage of Owners by number of individual persons, partnerships, corporations or other entities.

17.10 **Non-Dedication of Common Elements.** Declarant, in recording the Plats and this Declaration, has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Elements are not, by the terms of this Declaration, dedicated for use by the general public, unless they have been dedicated to, and accepted by, the County.

17.11 **References to Declaration.** Reference to this Declaration in any document or instrument in the real property records shall be deemed to include any supplements or amendments to this Declaration, without specific reference thereto.

17.12 **No Liability for Nuisances/Hazards Associated with Adjacent Lands.** By purchasing a Unit, each Owner hereby acknowledges that Unit may be located adjacent to, or in relatively close proximity to, land designated as a golf course (“Golf Course”). Owners of Lots hereby recognize and assume the risks of owning property adjacent to, or within relatively close proximity to, the Golf Course. Such risks include, without limitation, injury to persons and/or property arising out of, or resulting from, the operation, maintenance and/or use of the Golf Course, noise associated with the Golf Course, errant golf balls and/or other golf-related equipment, trespass, acts or omissions of Persons using or otherwise on the Golf Course, and/or the existence of water hazards, ponds and/or lakes on or near the Golf Course property, and attractive nuisances to children (collectively “Adjacent Property Risks”). Neither the Association, Declarant, any owner or operator of a portion or all of the Golf Course from time to time to include the Golf Course operator (“Golf Course Owner”), the Golf Course architect, nor their respective members, managers, officers, directors, employees, committees, independent contractors, agents, successors and assigns shall be liable to any Owner, his family, tenant, guests, invitees, servants, agents or employees for any personal injury or property damage resulting from the Adjacent Property Risks, including but not limited to, errant golf balls. By virtue of taking title to a Unit subject to this Declaration, each Owner of a Unit, for themselves, their heirs, personal representatives, executors, tenants, successors, assigns, invitees and licensees hereby agree to: (i) assume the risk of injury or damage to property or persons resulting from Adjacent Property Risks; (ii) obtain such policies of insurance as may be necessary to insure such Owner, his family, tenants, guests, invitees, servants, agents or employees from injury or damage to property or persons resulting from the Adjacent Property Risks; (iii) release, remise, hold harmless, and forever discharge the Association, Declarant, the Golf Course Owner and Golf Course architect and their respective members, managers, officers, directors, employees, independent contractors, agents, successors and assigns from any liability for any personal injury or property damage resulting from the Adjacent Property Risks, including without limitation, arising from the Association’s Declarant’s, Golf Course Owner’s, agents’, contractors’, subcontractors’, employees’, officers’, heirs’, successors’, assigns’, guests’ or invitees’ own negligence; and (iv) to indemnify (including reasonable costs and attorney’s fees) the Association, Declarant, Golf Course Owner and their respective members, managers, officers, directors, employees, independent contractors, agents, successors and assigns (“Benefited Parties”) of and from any and all claims, actions, suits, demands and/or compensation, either at law or in equity, against the Benefited Parties for or on account of any damage, loss or injury either to person or property, or both, resulting directly or indirectly from the Adjacent Property Risks.

Dated this 1<sup>st</sup> day of February 2005.

**DECLARANT:**

**SOUTH FORK RIVER CLUB LLC, a  
Colorado limited liability company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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