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**AMENDED AND RESTATED DECLARATION OF PROTECTIVE
COVENANTS FOR
RAPIDS ON THE COLORADO SUBDIVISION
a Planned Community
located in Garfield County, Colorado**

Page 1 of 57

Return to: Genesha Mary Hillen
2102 W. Arapahoe Dr
Littleton, CO 80120-3008



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AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS FOR RAPIDS ON
THE COLORADO SUBDIVISION
a Planned Community located in Garfield County, Colorado

THIS Amended and Restated Declaration of Protective Covenants for the Rapids on the Colorado Subdivision located in Garfield County, Colorado (the "**Declaration**"), is made this 27th day of September 2015, by Rapids Development Corporation and The Rapids on the Colorado Homeowners Association, (hereinafter collectively the "**Declarant**"), owners in fee simple of certain real property located in Garfield County, Colorado, known as the Rapids on the Colorado Subdivision, and as described and shown on the Amended Final Plat (defined herein), hereinafter the "**Subdivision**" or the "**Property**", and shall amend, replace and supercede in its entirety the Declaration of Protective Covenants recorded on September 9, 1997, in the Office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 513356 in Book 1032 at Page 963, as specified herein:

RECITALS

WHEREAS, Declarant is the owner of certain real Property located within Garfield County, Colorado which is more particularly described on Exhibit "A" attached hereto, which property is known as the Rapids on the Colorado Subdivision, and

WHEREAS, Declarant deems it desirable to amend the general plan for the improvement, development and maintenance of the Property and to amend, clarify, and restate the covenants, conditions and restrictions upon that Property for the purpose of forming a planned community as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-101 through - 409, C.R.S., (the "**Act**") to enhance, maintain and protect the value and attractiveness of the Property; and

WHEREAS, Declarant has previously deemed it desirable to set aside a portion of the Property as Common Elements, Lots and easements for the use of the owners of such Property and to establish a Colorado nonprofit corporation known as THE RAPIDS ON THE COLORADO HOMEOWNERS ASSOCIATION which shall be responsible for the administration, management and maintenance of the Association and Common Elements; and

WHEREAS, Declarant now deems it desirable to establish a Colorado River Trail Access Easement to provide access to the Colorado River for the use of the Owners of Lots within the Subdivision, and

WHEREAS, Declarant also deems it desirable to provide an irrigation water system for irrigation of certain Common Elements, storage of augmentation water in the Rapids Pond and for irrigation of 10,000 square feet of landscaping for each Lot in the Subdivision, and

WHEREAS, Declarant deems it desirable to amend and restate the Covenants to incorporate Common Element lot line and legal description adjustments approved by the Board of County Commissioners in the Amended Final Plat Rapids on the Colorado Subdivision recorded in the Office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 639203 (the "**Amended Final Plat**"), and to update, reorganize and modify the Declaration for future Lot Owners as provided for herein; and

WHEREAS, Declarant and the Lot Owners hereby adopt, accept and approve this Amended and Restated Declaration of Protective Covenants for Rapids on the Colorado Subdivision, by a vote of 100% of the votes entitled to be cast by members of the Association at a special meeting of the members duly held.

NOW, THEREFORE, Declarant hereby declares the following Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements to be imposed on and for the benefit of Rapids on the Colorado Subdivision and in furtherance of the purposes stated herein, Declarant makes the following declarations:

ARTICLE I - GENERAL PURPOSE, DEFINED TERMS, DESCRIPTION

1. **Purpose.** This Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions shall govern and be applicable to that certain real property located within Garfield County, Colorado, known as the Rapids on the Colorado Subdivision. It is the intent of the Declarant, expressed by its execution of this instrument, that the lands within the Subdivision be developed and maintained as a highly desirable scenic residential area with extensive open space and recreation trails for the exclusive use of the Owners and residents of the Subdivision, and their guests. It is the purpose of this Declaration to preserve the present natural beauty and character of the Property along with the views and setting of the Subdivision to the greatest extent reasonably possible, and to manage the lots therein with respect to use, structures, landscaping, appearance and general development consistent with the terms of this Declaration.
2. **Property Submission.** Declarant hereby submits the Property described in **Exhibit "A"** attached hereto and known as the Rapids on the Colorado Subdivision to this Declaration and to all of the terms and conditions contained in these Amended and Restated Protective Covenants, subject to those matters set forth in **Exhibit "B"** attached hereto. The Subdivision as more particularly described on the Amended Final Plat thereof recorded as Reception No. 639203 in the office of the Garfield County Clerk and Recorder, which Amended Final Plat is incorporated herein by reference, together with all easements, rights-

of-way, and appurtenances thereto and any buildings, fixtures, and improvements now or hereafter located on the Property is subject to this Declaration consistent with the provisions of the Act, as same may be amended from time to time. If the Act is repealed, the provisions of the Act on the effective date of these Covenants shall remain applicable to the Property. Declarant further declares that the Property shall be held, leased, mortgaged, sold, and conveyed subject to the terms, easements, reservations, restrictions, covenants, and conditions contained in this Declaration that shall run with the land and shall be binding upon all parties having any right, title, or interest in the Property or any part thereof, their heirs, devisees, legal representatives, successors, and assigns and shall inure to the benefit of each and every Owner.

3. **Defined Terms.** Each capitalized term not otherwise defined in this Declaration shall have the meaning specified or used in the Act. All references herein to a specific Article or Section shall mean the corresponding Article or Section contained in this Declaration.
4. **Name of Common Interest Community.** The name of the Common Interest Community is "Rapids on the Colorado Subdivision."
5. **Type of Common Interest Community.** The type of Common Interest Community is a Planned Community.
6. **Association Name.** The name of the Association is "**The Rapids on the Colorado Homeowners Association**" a Colorado nonprofit corporation (herein the "**Association**").
7. **Property Location.** The Property constituting the Common Interest Community is located within the County of Garfield, State of Colorado. Declarant reserves the right, but does not have the obligation, to expand the Planned Community to add the Additional Real Estate described on **Exhibit D** hereto and to add Lots consistent with the land use and zoning approved, or to be approved, by the Board of County Commissioners of Garfield County, Colorado.
8. **Property Description.** The Property consists of thirty-three (33) platted residential lots (hereinafter "**Lot**" or "**Lots**") and 17.76 acres more or less of open space as more particularly described on the Amended Final Plat of the Rapids on the Colorado Subdivision.

ARTICLE II - DEFINITIONS

1. **Definitions.** As used in these Protective Covenants, the following words, terms and letter designations shall have the following meanings:
2. "**Common Elements**" means all real property and improvements (including the Common Open Space and Common Open Space (Equine Area) identified in the Plat together with all easements owned or maintained by the Association for the common use

and enjoyment of all the Owners. Common Elements are identified as Common Open Space as shown on the Amended Final Plat, together with the Irrigation Water System (defined herein), water rights and the Colorado River Trail Access Easement together with any additional internal trails established by the Declarant or the Association consistent with this Declaration and the Act. Common Elements shall be owned and maintained by the Association.

3. "Common Facilities" means the outdoor lighting for the Common Elements, Common Element landscaping, the potable water system, fire hydrants, pipelines, roadways, trail easements (pedestrian and equine), water tank and such other improvements as the Association may install, cause to be installed or accept on the Common Elements. Common Facilities shall be owned and maintained by the Association.
4. "Lot" means a Unit in the Subdivision, as that term is defined by the Act.
5. "Lot Owner" or sometimes "Owner" means and refers to the record owner, whether one or more persons or entities, of any Lot in the Subdivision.
6. "Lot Owner's Related Users" means any Person who, (a) resides with an Owner within an Improvement, including an Owner's family members; (b) is a guest or invitee of an Owner; or (c) is a permitted tenant of any Lot improvement.
7. "May" as used herein is permissive.
8. "Mortgage" means any mortgage or deed of trust or other conveyance of a Lot, or any interest therein, including but not limited to the improvements thereon, to secure the performance of an obligation, which Lot will be reconveyed upon completion of such performance.
9. "Shall" as used herein is mandatory.
10. "Should" as used herein is advisory.

ARTICLE III - HOMEOWNERS ASSOCIATION

1. **Formation and Membership.** The Association shall be a nonprofit corporation established according to the Colorado Revised Nonprofit Corporation Act, C.R.S. §§7-121-101 to -301 (herein the "CRNCA"), charged with the duties and vested with the powers prescribed by law and as set forth in its Articles of Incorporation, Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall be a membership association without certificates or shares of stock. All Owners, including Declarant, who own or acquire the title in fee to any

of the Lots in the Subdivision by whatever means acquired shall automatically become members of the Association. Membership in the Association shall automatically terminate when an Owner of one of the Lots ceases to be an Owner of such Lot.

2. **Voting Rights.** The Association shall have one class of membership consisting of all Owners of Lots. Each Owner shall be entitled to one (1) vote on Association matters. Notwithstanding the number of Owners of record for any particular Lot, the vote allocated to the Lot cannot be fractionally divided. When a Lot is owned by multiple parties the Owners shall advise the Association of the party entitled to cast the vote. If a majority of the multiple Lot 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.
3. **Voting by Proxy.** Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. A written proxy is void if it is not dated or purports to be revocable without notice. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy terminates eleven months after its date unless it provides otherwise.
4. **Executive Board and Officers.** The affairs of the Association shall be governed by an Executive Board consisting of three (3) members elected by the Owners. The initial Board shall be comprised of three (3) members appointed by the Declarant. The Executive Board may elect or appoint officers in accordance with the Act, and the Association Articles and Bylaws as the same may be amended from time to time. The Executive Board may also appoint various committees, hire employees as may be required, and enter into a contract with a management company for a term not to exceed five years. The Board shall determine the compensation to be paid to any employee of the Association.
5. **Purpose.** The Association, through its Executive Board, shall be authorized and empowered to take each and every step necessary or convenient for the implementation and enforcement of the Covenants contained in this Declaration including:
 - (i) Adopt and amend Bylaws and Rules and Regulations;
 - (ii) Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
 - (iii) Hire and terminate Managers and other employees, agents and independent contractors;
 - (iv) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or the Lot Owners on matters affecting the Subdivision;

- (v) Make contracts and incur liabilities relating to the operation of the Association;
- (vi) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (vii) Cause additional improvements to be made within the Common Elements;
- (viii) Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property;
- (ix) Grant easements, leases, licenses and concessions through or over the Common Elements consistent with the use rights, limitations and restrictions contained in this Declaration.
- (x) Administer easements, leases, licenses and concessions through or over the Common Elements on behalf of the benefited Owner or Owners;
- (xi) Impose administrative charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Governing Documents;
- (xii) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;
- (xiii) Provide for indemnification of its officers and the Board Members to the fullest extent provided by law, and maintain liability and/or fidelity insurance for Board Members and Officers;
- (xiv) With the consent of not less than sixty-seven percent of all Lot Owners, assign its right to future income, including the right to receive Assessments;
- (xv) Prepare and update community reserve reports consistent with the Act, and if needed include in the community Budget a reserve assessment sufficient to fund the reserves necessary to maintain the community as a first class Planned Community;
- (xvi) Exercise any other powers conferred by the Declaration, Association Bylaws or the Act;
- (xvii) Exercise all other powers that may be exercised in the state of Colorado by legal entities of the same type as the Association; and
- (xviii) Exercise any other powers necessary and proper for the governance and operation of the Association.

The Association shall be governed by its Articles of Incorporation and Bylaws and any Rules and Regulations and duly adopted Policies as such governing documents may be amended from time to time (collectively the "**Governing Documents**").

6. **Common Elements and Common Facilities.** The Association shall own, operate, and maintain all Common Elements and Common Facilities within the Subdivision and such real and personal property and adjacent to the Subdivision identified herein as Common Elements or Common Facilities.
7. **Period of Declarant Control.** The Declarant shall have the reserved power, pursuant to the Act, to appoint and remove officers and members of the Executive Board. This period of Declarant control ("Declarant Control") terminates no later than sixty (60) days after the conveyance of seventy-five percent of the Lots that may be created to Owners other than Declarant or two years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two years after any right to add new Lots was last exercised, whichever is occurs earliest (the "Turnover Date"). During the period of Declarant Control, the Declarant's Control shall be subject to the following limitations:
 - a. Not later than sixty days after conveyance of twenty-five percent of the Units that may be created to Owners other than the Declarant, at least one Board Member and not less than twenty-five percent of the Board Members must be elected by Unit Owners other than the Declarant. Not later than sixty days after conveyance of fifty percent of the Units that may be created to Owners other than the Declarant, not less than thirty-three and one-third percent of the Board Members must be elected by Owners other than the Declarant.
 - b. The Declarant may voluntarily surrender the right to appoint and remove Officers and Board Members before the Turnover Date, but, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.
8. **Limited Liability and Indemnification.** To the fullest extent permitted by law, neither the Association nor its past, present or future officers, directors, nor any employee, agent or committee member of the Association, nor the Declarant shall be liable to any Owner or to any other person for any damage, act, omission to act, simple negligence or other matter of any kind or nature, except gross negligence. Without limit to the foregoing, the Association, the Board and the Declarant shall not be liable to any party for any action or for any failure to act, in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify the Association, the

Board and the Declarant against all loss resulting from such action or failure to act, including expenses, liabilities and attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved. The foregoing limitations of liability shall extend to the officers, agents, legal representatives and owners of Declarant.

9. **Notice to Owners.** Notice to an Owner of matters affecting the Subdivision by the Association or by another Owner shall be sufficiently given if such notice is in writing and is delivered personally, by courier, or private service delivery or on the third business day after deposit in the U.S. Mail at the address of record for real property tax assessment notices with respect to that Owner's Lot. Notice of any meeting of the Owners or the Board also may be physically posted in a conspicuous place in the Subdivision. If an electronic means of notice is available and an Owner requests that the Association send notice by electronic mail, the Association may provide notice of all regular and special meetings of the Association by electronic mail to all Lot Owners who request such notice, and furnish the Association with their electronic mail addresses and such electronic notice shall be sufficient for notice purposes under this Declaration.
10. **Conduct of Meetings.** All meetings of the Association, the Board or any committee established in furtherance of the governance of the Association shall be open to attendance by all Owners or their designated representatives, and conducted in accordance with the Association's responsible governance policies, provided the Board may hold an executive session for those matters specifically identified in the Act as confidential.
11. **Resolution Preference; Alternative Dispute Resolution.** This Declaration has been recorded to establish and maintain a harmonious Subdivision, including the prompt, efficient, fair and conciliatory resolution of any disputes to promote a pleasant atmosphere within the Subdivision. Accordingly, any dispute arising out of or relating to the creation of the Subdivision by this Declaration, or between the Declarant and the Association or the Declarant and any Owner shall be resolved as set forth in the policy adopted to provide for resolution processes as described on Exhibit E attached hereto and by this reference made a part hereof (the "**Dispute Resolution Policy**"), subject to the Declarant's or the Association's right to take appropriate immediate action or pursue judicial remedies if any dispute involves an imminent threat to the peace, health or safety of the Subdivision, to collect Assessments and to enjoin violations of the covenants contained in this Declaration.

ARTICLE IV - EASEMENTS AND LICENSES

- I. **Lot Owners' Easements.** Every Owner shall have a right of enjoyment and access to the Common Elements including the Common Open Space areas shown on the Amended Final Plat and access to the Colorado River for recreational purposes utilizing the Colorado

River Trail Access Easement described in **Exhibit "C"** attached hereto and made a part hereof by this reference. Such easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Association to promulgate and publish rules and regulations with which each Owner and their guests shall strictly comply.
 - b. The right of the Association to suspend the voting rights and rights to use the Common Elements by any Owner for any period during which any assessment against their Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its rules and regulations.
 - c. The right of the Association to grant easements, leases, licenses, and concessions through and over the Common Elements identified as Common Areas and depicted on the Amended Final Plat.
 - d. Notwithstanding any other covenant, condition or restriction herein, the Association shall not grant easements, leases, licenses, or concessions through or across the Colorado River Trail Access Easement described in Exhibit "C" attached hereto to any unrelated third party without the unanimous written consent of the Owners of Lots 3 through 16 of the Rapids on the Colorado Subdivision as shown on the Amended Final Plat.
 - e. The right of the Association to convey or subject a Common Element, to a Security Interest in accordance with and to the extent permitted by the Act. Notwithstanding the above, a security interest cannot be granted on the Colorado River Trail Access Easement.
 - f. The right of the Association to close or limit the use of the Common Elements or Common Facilities from time to time due to safety concerns or while maintaining, repairing, or replacing such Common Elements.
 - g. Any Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants, or guests who reside on or rent their Lot (each an "**Owner's Related User**"), provided the Owner's Related User shall be bound by and shall comply with the terms of this Declaration.
 - h. The right of the Association to utilize utility and drainage easements located ten (10) feet from any lot line, twenty (20) feet adjacent to Rapids View Lane, Paddle Wheel Lane and White Water Lane and thirty (30) feet adjacent to County Road 335.
2. **Utility, Drainage and Irrigation Easements.** Utility, drainage and irrigation easements are reserved in Plat Note 1 of the Amended Final Plat. The Association is entitled to use such easements shown or described on the Amended Final Plat, including without limitation, all easements designated for the use of public utilities. Unless agreed to with the adjacent Lot Owner, the Association shall have no obligation to pay any amount for

the use and enjoyment of such easement. The Association shall pay for the cost of maintaining and repairing any improvements which it places on any easements.

3. **Development Easements.** There is hereby created a blanket reciprocal easement upon, across, over, in and under the Property for the benefit of the Declarant, or its designated successor as necessary for construction of Lot Improvements, and the Association for ingress and egress, installation, replacing, repairing and maintaining utilities and communication facilities, including necessary lines for domestic water, irrigation water, sewer, gas, telephone, cable television, internet service, communication and electricity. Such blanket easement includes utility services not presently available to the Lots which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the Declarant and the Association to enter into such easement agreements it deems necessary to allow the companies providing utilities Lot access in a manner customary for such utility companies in the area surrounding the Subdivision, subject to approval by the Declarant as to locations until the Turnover Date, and thereafter by the Board.
4. **Easements for Access and Repairs.** The Association shall be entitled to an easement across any of the Lots within the Subdivision for the purposes of accessing any of the Association's property, protecting any Association property, or for necessary repairs or emergency circumstances. The Association may access all Lots within the Subdivision at reasonable times to determine compliance with the conditions of approvals of the Subdivision granted by the County of Garfield and to determine and enforce compliance with all of the provisions of these Covenants. Association access for making emergency repairs or for emergency maintenance or inspection necessary to prevent damage to the Common Elements or another Unit, including Unit Improvements, may be required at any time.
5. **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties. Nothing in this Declaration shall be construed as a grant by the Declarant or by the Association to allow any emergency or law enforcement agencies or persons to enter into a Lot or Improvements when such entry would require a duly authorized warrant.

ARTICLE V - USE RESTRICTIONS AND PROTECTIVE COVENANTS

1. **General Restriction.** No more than one (1) detached single-family dwelling, together with permitted structures appurtenant thereto, shall be constructed on any Lot. All construction within a Lot must take place within the building envelope for that Lot as depicted or described on the Amended Final Plat, consistent with the ACC approval obligations and issuance of an appropriate building permit by Garfield County, Colorado. Duplexes and multi-family structures in the Subdivision are strictly prohibited. Construction

of detached garages is permitted pursuant to the conditions set forth in Article VI, paragraph 2 below.

2. **Limited Business Activities.** Subject to all applicable governmental and zoning regulations, and in addition to residential purposes, in-home business activities or occupations not involving the provision of on-site services for customers or use of employees on site (other than Owners) shall be allowed, provided such activities; (i) are conducted solely within the Lot, (ii) do not materially increase motor vehicle traffic on the Property, (iii) do not create any external indication of an in-home business, and (iv) do not generate any noise, smoke, dust, odors, heat or other emanations that are noxious or otherwise offensive to the senses. Notwithstanding the foregoing, business activities associated with the sale of Lots shall be allowed, including without limitation the inclusion of a sales office in the model home if built by Declarant.
3. **Noxious or Offensive Activity or Sounds.** No noxious or offensive activity or sounds shall be conducted or transmitted upon any portion of the Subdivision at any time nor shall anything be done or permitted which may be or become a nuisance to other property or to the Owners thereof by sight or sound.
4. **Enclosure of Unsightly Facilities and Equipment.** All unsightly structures, facilities, equipment, and other items, including but not limited to those specified below, shall be enclosed within a solid structure sufficient to screen such things from view from the common roads and neighboring homes to the greatest extent possible. Any motor home, trailer, boat, tractor, motorcycle, snow removal or garden equipment, and any similar item shall be kept at all times, except when in actual use, in an enclosed garage. Any refuse or trash containers, propane tanks, fuel storage tanks, or other facilities shall be enclosed within a structure or appropriately screened from view by planting or fencing approved by the ACC and adequate to conceal the same from neighbors, streets, and private roads. Personal property, building materials and equipment may be kept or stored on a Lot, provided such property is contained within a privacy fence that assures protection of the Subdivision views from interior Subdivision roads and County Road 335, and keeps the property out of view from adjacent Lots. Any privacy or structure shall be constructed of a durable material consistent with the character of the Subdivision as approved by the ACC. Building materials may be stored on-site without containment during the course of construction and only for such reasonable periods of time as are necessary prior to the collection of or disposal thereof.
5. **Mobile Homes.** No Mobile Homes shall be constructed or placed within the Subdivision. As used herein, "Mobile Home" means a HUD-standard [Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.), effective June 15, 1976, approved structure without a permanent foundation, designed to be transported after fabrication and equal to or exceeding fourteen (14) ft. in width and 700 square ft. in area, excluding towing gear and bumpers. Such structures may be suitable for human habitation

on a year-round basis, but are not allowed in the Subdivision. The term "Mobile Home" shall not include "travel trailers," "campers," "camper buses," "buses," or "motor homes." The prohibition on Mobile Homes shall not apply to construction trailers which shall be permitted for twelve (12) months from the date of commencement of construction, or until the issuance of a certificate of occupancy, whichever first occurs; provided, however, construction trailers may only be used for construction, office, and storage purposes and shall not be occupied as a residence for any period of time. All other trailer homes or temporary structures of any kind shall be prohibited. However, during the period of Declarant Control a modular structure for use as a sales office for the Subdivision shall be permitted.

6. **Unauthorized Vehicles.** Snowmobiles, motorized dirt bikes or all-terrain vehicles (ATVs) may be operated within the Subdivision, provided the vehicles remain on designated Subdivision Roads and are operated in a safe manner consistent with existing speed limits and any applicable vehicle restrictions. No snowmobiles, boats, or inoperable motor vehicles shall be stored within the Subdivision unless stored within a garage or a privacy fence containment permitted by this Declaration.
7. **Satellite Dishes.** Satellite dishes shall be allowed within the Subdivision. Location and size of all satellite dishes shall be subject to ACC approval, but in no event shall any satellite dish exceed thirty (30) inches in diameter unless approved by the ACC.
8. **Vegetation Control.** Lot Owners are responsible for keeping their Lot reasonably free from noxious weeds, trees and shrubs. The Association shall have the right, but not the obligation, to come onto the Lot and fulfill the Lot Owner's plant maintenance responsibilities at the Owner's expense and the Lot Owner shall reimburse the Association for any such maintenance. The cost of noxious plant maintenance may be assessed against the Owner's property, if necessary.
9. **Pets and Farm Animals.** No animals, livestock or poultry of any kind, including horses, shall be raised, bred or kept on any Lot, except that domesticated birds or fish and other small domestic animals permanently confined indoors will be allowed, provided that they are not kept, bred, or maintained for any commercial purpose.
10. **Limitation of Pets.** An Owner may have an aggregate of not more than three (3) domesticated animals (e.g., two cats and one dog) per household, subject to all applicable local ordinances. The Executive Board, in its sole discretion and on a case-by-case basis, may reasonably restrict a household pet from being kept within the Property. The Executive Board may, upon application by Lot Owner grant a variance to temporarily increase the amount of household pets permitted on the Owner's Lot as long as the pets are not a nuisance. Such variance(s) shall be granted at the sole discretion of the Executive Board.
 - a. **Excluded Animals.** In no event will any dog whose breed is known for its viciousness or ill temper, in particular, the American Staffordshire Terrier (known as a "Pit Bull Terrier")

be permitted in the Planned Community, nor any animal of any kind that has venom or poisonous capture mechanisms, or if let loose would constitute vermin, be allowed in the Planned Community. The Association reserves the right to make a determination that any particular pet is too dangerous to be allowed in the Planned Community. No animal of any kind shall be permitted which in the sole opinion of the Association makes an unreasonable amount of noise or odor, is a nuisance, or is a threat to public safety.

- b. Pet Maintenance. Pet owners shall clean up after their pet(s) and dispose of any bodily wastes in suitable containers. Pets shall not be allowed to damage grass, shrubs, trees or any other portion of the open space properties. Expenses and costs resulting from damage to shrubs, trees on open space properties will be the responsibility of the Owner of the Lot at which the responsible pet is kept.
- c. Pet License. Animals must be licensed as required by law.
- d. Wildlife Feeding. With the exception of bird feeders, the feeding, baiting, salting, or other means of attracting wildlife is prohibited.
- e. Pet Control. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed or under the careful control and supervision of the pet Owner. Pets, including dogs and cats, shall not be allowed to roam unrestrained without supervision within the Subdivision.
- f. Responsibility for Pet. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet, and shall be responsible for all costs incurred by the Association or its agent as a result of noncompliance with these animal and pet regulations.
- g. Dog Control. When outside the residence on an Owner's Lot, dogs shall be confined by: (1) confinement in an area bounded by an above-ground fence; (2) confinement in a kennel; (3) a leash attached to a person. Dogs shall not be allowed to chase or molest persons on their property, wildlife or domestic animals.
- h. Barking. Dogs shall not be allowed to bark continuously, which shall be defined as barking for a fifteen (15) minute period, including successive barks or a series of barks which repeat or resume unreasonably following a brief or temporary cessation, provided the Owners acknowledge the Subdivision is located in close proximity to various wildlife species that enter the subdivision. Barking by a dog at wildlife, trespassers or intruders, or typical barking in response to people encroaching upon a Lot shall not be considered a violation of these Covenants.
- i. Violation of Covenants. Any violation of the Covenants or of the Rules and Regulations concerning pets, shall subject an Owner to the rights and remedies allowed or provided to the Association in the Covenants, and shall also subject the Owner to a reasonable fine assessment imposed by the Association, after notice and a hearing, as follows:

- i. First Offense/Violation: Written notice warning letter to pet owner and/or Owner.
 - ii. Second Offense/Violation: A minimum \$100.00 fine may be assessed against the Owner, except for a violation of section II C, which shall carry a minimum fine of \$500.00 per day **until cured**.
 - iii. Third Offense/Violation: A minimum \$200.00 fine may be assessed against the Owner.
 - iv. Fourth Offense/Violation: A minimum \$500.00 fine may be assessed against the Owner.
 - v. Fifth or Continuing Offense/Violation: The Association may take action to have the pet removed from the Planned Community by mandatory injunction or otherwise.
11. **Common Open Space (Equine Area).** The Amended Final Plat of the Rapids on the Colorado Subdivision provides a 3.93 acre Common Open Space Equine tract. The Association's Board of Directors may authorize such use and shall specify how the Common Open Space Equine Tract will be utilized and managed. Notwithstanding the foregoing, no animal(s) may be kept within the Open Space area which, in the good-faith judgment of the Executive Board, results in any annoyance that is obnoxious to Lot Owners or residents in the Subdivision. Among other uses, the Common Open Space Equine tract may be irrigated and used as a park or recreation area for Lot Owners.
12. **Common Open Space Areas, and Trails.** All Common Elements, including Common Open Space areas and trails within the Subdivision shall be restricted to use by the Owners, the Owner's Related Users and shall not be used for residential purposes. The Association shall be responsible for the repair and maintenance of common areas.
13. **Hunting and Wildlife Precautions.** Although lands adjacent to the Subdivision, owned by the Colorado Division of Parks and Wildlife, are frequently hunted during big game seasons, hunting is prohibited within the Subdivision.
14. **Stoves.** Open hearth solid-fuel fireplaces are prohibited within the Subdivision. Each Lot may have one (1) new solid-fuel burning stove that is in compliance with all state and local laws pertaining to wood burning stoves. All Lots are permitted to have an unrestricted number of natural gas burning stoves, fireplaces, and other appliances

ARTICLE VI - ARCHITECTURAL CONTROL COMMITTEE AND IMPROVEMENT APPLICATIONS

1. **Architectural Control Committee.** The Architectural Control Committee (hereinafter "ACC") shall be composed of three (3) persons. During the period of Declarant's control, Declarant may appoint the members of the ACC which may include officers, directors, or shareholders of Declarant, in Declarant's sole discretion. The Executive Board of the Homeowners Association shall have no authority to remove any member so appointed without the Declarant's express written consent before or after the Turnover Date. Upon the sale of the last Lot in the Subdivision, or at an earlier time as determined by Declarant, the Executive Board of the Association shall appoint the members of the ACC. The Executive Board has discretion to remove any member of the ACC appointed by the Executive Board and to appoint a new member at any time. The members of the ACC may be directors of the Association but during the period of Declarant Control need not be Owners. After Declarant Control terminates the Officers are elected from among the Owners. The ACC shall have and shall exercise all the powers, duties, and responsibilities set out in this Declaration.

2. **Construction and Alteration of Improvements.** No Improvements of any kind, shall be constructed, erected, altered, or permitted to remain within the Subdivision, nor shall any excavating be done within the Subdivision, unless the complete architectural plans and specifications, and a site plan showing the location and orientation thereof, for such erection or alteration are approved by the ACC prior to the commencement of such work, except as Declarant may be specifically permitted to do by these Covenants. Major Landscaping plans must be provided to the ACC in advance of undertaking the work. Major Landscaping shall include any landscaping work that would materially alter the contour of the land or impact drainage. Installation of trees and shrubs or irrigated grass shall not be considered Major Landscaping, provided no landscaping shall be installed within ten (10) feet of any Lot line without ACC approval nor shall any landscaping be installed on or within any drainage easement. Revegetation of all infills and cuts shall be required, and plans addressing the revegetation of infills and cuts must be submitted to the ACC prior to any excavation. As used herein "Improvement" means, without limitation dwelling units, garages, swimming pools, ponds, parking areas, fences, walls, driveways, exterior antennae, walks, spas, patio covers, roofing, trash containers, satellite dishes, additions, permanent recreational structures, decks, signs, exterior tanks, solar equipment and exterior air conditioning.
 - a. ACC Application. Before commencing construction for any Improvement for which a building permit must be secured the Lot Owner shall submit to the ACC three (3) complete sets of the architectural and site development plans and specifications for the Improvement along with a complete list of all exterior materials and colors to be used for any proposed Improvement together with the Construction Deposit set forth in Section 6. All copies of the complete plans and specifications shall be signed and dated for identification by the Owner or the Owner's architect. The ACC shall have the right to request whatever additional specification information, plans, reports, and additional information it deems necessary to evaluate the development proposal throughout the

approval and construction process. For any Improvement that does not require an approved building permit, the Owner may consult with the ACC in advance of the submittal, and the ACC shall have the discretion to modify the submission requirements. In addition, the ACC may adopt rules and regulations which shall specify the information, reports, plans, specifications, and other information required to be submitted to the ACC.

- b. **ACC Action.** In the event the ACC fails to take any action within forty-five (45) days after three (3) copies of the complete architectural and site development plans, specifications, materials, and colors have been submitted to it and the submittal has been certified in writing by the ACC as complete, then all of such submitted architectural plans shall be deemed approved. The ACC shall not unreasonably disapprove the architectural plans. The majority vote of the members of the ACC shall be required for approval of plans. In the event the ACC disapproves any architectural plans, the person or entity submitting such architectural plans may appeal the matter to the next annual or special meeting of the members of the Association where a vote of seventy-five percent (75%) of the members' votes entitled to be cast at said members' meetings shall be required to change the decision of the ACC.

3. **Limitation on Building Improvements.**

- a. **Single Family Lots.** Single family lots may not include any Improvements except:
 - i. **Residence.** One single family residence with an attached multi-car garage, plus
 - ii. **Garage.** A detached garage or privacy fence of a size and location approved in writing by the ACC.
 - iii. **Other Improvements.** Such fences, walls, patios, driveways and parking areas and other amenities as approved in writing by the ACC, and
 - iv. **Landscaping.** Landscaping improvements and recreational amenities requiring ACC approval only as approved in writing by the ACC.

4. **Building Envelope and Addresses.** Any Building Improvement built or located on any Lot must be contained within the prescribed building envelope for that Lot as shown on the Amended Final Plat, or as specified in Plat Notes 1 through 10 on the Amended Final Plat. Additionally, the precise siting of homes, leach fields, fences and other improvements within the building envelopes shall be subject to ACC review and approval. Minor encroachment outside such building lines may be located outside of the Building Envelope if the encroachment is approved in writing by the ACC. "Minor" encroachments shall include roof overhangs, porches, patios and service areas. Approval of minor encroachments shall be in the sole discretion of the ACC and absent such approval no fences, structures or buildings shall be permitted to remain outside the building envelope on any Lot. Building

addresses shall be clearly visible and identifiable, located conspicuously on the Lot to ensure ease of identification and access for emergency services.

5. **ACC Initial Approval.** Each Owner shall not apply to any governmental authority to construct building Improvements on such Owner's Lot, without prior written approval of the ACC.
6. **Construction Deposit.** Prior to commencing construction on any Lot, the Lot Owner shall provide to the ACC (payable to the Association) a refundable construction deposit in the amount of \$1,000. The deposit shall be refunded to Lot Owner at the time the ACC grants final acceptance of the construction and confirms that the Lot Owner adequately cleaned up the Lot upon completion of the construction.
7. **Completion of Construction.** Any construction activity on any Lot in the Subdivision shall be completed, fully cleaned up, and landscaped within twelve (12) months from the issuance of a building permit, unless the Lot Owner first obtains a variance from the ACC to allow for a longer period of construction upon proof of due diligence. In the event a variance is not secured and twelve (12) months from issuance of a building permit has passed, the Association may assess penalties in any amount it deems appropriate. Upon commencement of any construction on any Lot in the Subdivision, the Lot Owner shall complete said construction with reasonable diligence.
8. **Variances.** The ACC may, by an affirmative vote of a majority of its members, allow reasonable variances as to any of the covenants and restrictions governing architectural control contained in this instrument and/or policies or rules promulgated by the ACC, on such terms and conditions as it shall require. No variance shall be granted which contravenes any provision of this Declaration which Declarant was required to include as a condition of approval by Garfield County or which violates Garfield County's Land Use and Building Codes. No variance shall be granted without written notice of the request for such variance provided ten (10) days prior to the hearing for said variance to all Lot Owners within the Subdivision. Notice to such Lot Owners shall be deemed complete when placed in the United States Mail, first-class postage prepaid, to the last known address for each Lot Owner as provided to the Association.
9. **General Requirements.** The ACC shall exercise its best judgment to see that all Improvements including all methods of construction and all landscaping, and alterations within the Subdivision harmonize to the greatest extent possible with the surroundings and with other structures as to design, materials, color, height, grade, finished ground elevation of neighboring lots, and other design features. The ACC shall strive to protect the seclusion and view of each Lot insofar as reasonably possible in the development of the Subdivision pursuant to these Covenants. The ACC shall also endeavor to protect and preserve the Common Open Space areas and easements including the control and removal of invasive plants, shrubs and trees within and along the banks of the Colorado River Trail Access

Easement, the Rapids Pond, roads, utility and drainage easements. The ACC shall also endeavor to protect the Property by protecting building envelopes and drainage easements as set forth below.

- a. Soils and Foundation Report, and Grading and Drainage Plan. Prior to the issuance of a building permit, a Lot Owner shall obtain and submit to the County and the ACC a soils and foundation report and a grading and drainage plan prepared by an engineer licensed in the state of Colorado. All improvements and structures shall be constructed in accordance with the recommendations and conditions of such report and plan which are included by Garfield County as conditions of the building permit and/or are made requirements or conditions of the approval of the ACC. Improvements and structures shall also comply with the drainage plan prepared by an engineer licensed in the State of Colorado.
- b. Materials. In its review of any proposed development activity, the ACC shall evaluate, among other things, the materials to be used on building or structure exteriors, including exterior colors, location with respect to topography and finished grade elevations.
- c. Landscape Envelopes and Irrigation Water. Landscape envelopes are not outlined on the Amended Final Plat but size limitations are addressed in Plat Note 10 that states: "All Lot Owners shall comply with the provisions under which the well permits for the Subdivision were approved. No lot shall irrigate more than 10,000 square feet of land with water from the central domestic system, and all waste water disposal systems shall have non-evaporative leach fields."

After January 1, 2017 all residences within the Subdivision shall have external water meters to measure usage of water from the Potable Water System. The Association shall establish monthly limitations for the amount of domestic water available to each Lot through the Potable Water System. After January 1, 2017 Owners shall utilize the Irrigation Water System to irrigate not more than 10,000 square feet of landscape on each Lot. The Board shall establish rules to ensure the equitable distribution of irrigation water to Owners and for irrigation of Common Areas. The rules may provide watering schedules and time restrictions if necessary to insure equitable water availability to all Lot Owners.

10. Preliminary Approvals. Lot Owners who anticipate constructing improvements may submit preliminary sketches of such proposed improvements to the ACC for informal and preliminary approval or disapproval. All preliminary sketches should be submitted in at least three (3) sets and should contain sufficient general information on those matters required to be in the complete architectural and site development plans and specifications to allow the ACC to grant an informed preliminary approval or disapproval. The ACC shall never be finally committed or bound by any preliminary or informal approval or disapproval until such time as complete architectural and site development plans, specifications, materials, and

colors are submitted and approved or disapproved. If the ACC grants preliminary approval of a preliminary sketch and the Lot Owner subsequently submits for approval plans and specifications which are the same or substantially similar to the approved preliminary sketch, the ACC shall not unreasonably withhold approval of the submitted plans and specifications. The preliminary approval is offered as an accommodation only, and the ACC may charge reasonable fees for this service.

11. **Architectural and Site Development Plans.** The ACC shall disapprove any architectural and site development plans submitted to it that do not contain sufficient information for it to exercise the judgment required of it by these Covenants.
12. **ACC Not Liable.** The ACC shall not be liable for damages to any person or entity submitting any plans for approval, or to any Owner or Owners of Lots within the Subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such plans. The ACC shall have no liability or responsibility for any representations made to any Owner or prospective Owner by any third parties. The decisions of the ACC shall be governed by these Covenants and any rules or regulations duly adopted by the ACC pursuant to these Covenants.
13. **Written Records.** The ACC shall keep and safeguard for at least five (5) years complete permanent written records of all approved applications, including one (1) set of the final approved architectural and site development plans, and of all actions of approval or disapproval and all other formal actions taken by it under the provisions of this instrument.
14. **Authority to Promulgate Design Guidelines, Rules and Regulations.** The ACC may promulgate and adopt additional design guidelines and rules and regulations necessary to implement these Covenants. The design guidelines may include requirements relating to acceptable building materials, architectural styles, allowable colors for home exteriors, etc. The rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications, and other information necessary to make an informed decision regarding requests for development, or modifications to buildings. The rules and regulations may also establish a reasonable review fee that will be charged for each submission to the ACC.
15. **Planning Professionals.** The ACC may hire professional consultants and may contract to delegate any of its functions and duties to a third party(s) if deemed qualified by the ACC.

ARTICLE VII – DEVELOPMENT RESTRICTIONS AND DISCLOSURES

1. **No Further Subdivision.** No Lot described on the recorded Amended Final Plat shall ever be further subdivided into smaller Lots or conveyed or encumbered in less than the full dimensions as shown on the recorded Amended Final Plat; provided, however, conveyances or

dedications of easements for trails, utilities or access that are approved by the ACC may be made for less than all of one (1) Lot. Notwithstanding the foregoing, a Lot line adjustment between two (2) or more Lots in the Subdivision shall be deemed a permitted subdivision, subject, however, to any reviews or approvals that may be required by Garfield County, and subject to the prior approval of the ACC.

2. **Water Systems – Domestic and Irrigation Systems.** The Association shall utilize existing and replacement water wells to provide a domestic (In-house) water supply to each residence constructed in the Subdivision. Subject to availability, ditch water rights diverted from Garfield Creek will be utilized for irrigation of a maximum of 10,000 square feet of landscaping on each Lot, for irrigation of Common Open Space areas and for storage of water in the Rapids Pond. The decreed Moore Ditch water rights, utilized to provide both domestic and irrigation water to the Subdivision, are subject to the conditions and limitations established in the a Plan of Augmentation Including Exchange, and Alternate Point of Diversion approved by the District Court – Division 5 – District 45 in Case W-3262 ("**Augmentation Plan**").

a. **Potable Water System.** Existing and replacement domestic wells owned by the Association shall provide water from a common distribution system to all residences constructed within the Subdivision. The Association shall operate, repair and maintain the domestic water system. All Lot Owners shall have external read-out water meters to record domestic water usage as a condition of final certificate of occupancy. Residences that do not currently have external read-out meters shall install meters acceptable to the Board's engineer, at Owner's expense, prior to January 1, 2017.

Each Lot Owner's potable water usage shall be limited to 25,000 gallons per month and shall be metered and strictly enforced. The 25,000 gallons per month limitation shall be subject to review by the Board at a time when sufficient data concerning well response, actual usage and the effects of drought conditions is available. The Executive Board shall establish fees for water usage and shall invoice Owners assessments for water use on a periodic basis.

b. **Irrigation Water System.** During the irrigation season (April 15 through September 30), subject to availability, non-potable irrigation water shall be provided to each lot by the Association. Moore Ditch water rights owned by the Association (0.500 cfs, or approximately 224 gpm) may be diverted from Garfield Creek at the Moore Ditch headgate into the Moore ditch/pipeline and then into the Association's common irrigation water distribution system ("Irrigation System"). The Irrigation System shall be extended to the boundary of each Lot in the Subdivision. The Association shall operate, repair and maintain the Moore Ditch pipeline and Irrigation System as a Common Facility to the Lot Boundary. Each Lot Owner shall be responsible for the purchase, installation, operation, maintenance and replacement of the individual landscape irrigation system on said Owner's Lot. In no event shall any Lot owner be entitled to divert water from the Irrigation System except as approved by the ACC, or to make modifications to the Irrigation System for diversion purposes, nor shall any Lot Owner obstruct or impede the flow of water through the Irrigation

System. All individual Lot irrigation systems shall be placed underground, except sprinkler heads or on/off valves.

- c. **Conservation Restrictions.** The Association shall from time to time adopt water conservation and use restrictions to be strictly imposed upon and complied with by the Lot Owners. The Association reserves the right to establish such use restrictions, Rules and Regulations as it may deem appropriate. Such conservation use restrictions may, without limitation, include odd/even day water schedules or other similar restrictions to most efficiently use and preserve water resources.
- d. **Augmentation Plan.** On October 5, 1979, the District Court approved an Augmentation Plan decree W-3262 (the "**Augmentation Decree**") approving a plan that would increase the flow of Baldy Creek, Garfield Creek and the Colorado River through the elimination of agricultural irrigation of lands historically irrigated by senior water rights specified in the augmentation application. The increased flow made available to the stream system replaced by exchange, such depletions to the Baldy-Garfield-Colorado River systems that result from otherwise out-of-priority storage of water from the Garfield Creek system or from springs, well or wells, or other structures, all to provide domestic, municipal, commercial, industrial, mechanical and other service to lands the Applicant owned in the Garfield Creek water shed, including the Property.

The approved augmentation plan is based upon an average occupancy of 3.5 persons per unit throughout 365 days per year, requiring an average delivery of 100 gallons per capita per day establishing a reasonable basis for the amount of consumptive use of Garfield Creek water that required replacement. The treatment and disposal of sewage resulting from the residential water use is served by means of a septic tank-leaching field system buried not less than 36 inches below ground surface. The average residential unit is reasonably expected to deplete the Garfield Creek system from in-house use by as much as 10% of its diversions, or 0.0392 acre feet per year per residential equivalent unit.

To the extent that land associated with residential development receives irrigation for landscaping and amenity values, the consumptive use resulting therefrom is reasonably expected to equal two acre feet per acre per year.

- e. **Restrictive Covenants Associated With Augmentation Plan Decree W-3262.** The following restrictive use obligations are hereby imposed on each Lot in the Subdivision, in accordance with paragraph 14 of the Augmentation Decree. The use covenants and restrictions shall run with the land and shall apply to each subsequent Owner of any Lot.

CONDITIONS, LIMITATIONS AND COVENANTS

Specify Source of Domestic Water To Lot

Public Water System – Rapids Wells

Specify Source of Irrigation Water to Lot – 1998 - 2017	Public Water System – Rapids Wells
Specify Source of Irrigation Water to Lot – 2017 and thereafter	Irrigation Water System – Moore Ditch diversion, to be established by the Declarant before conversion.
Specify Method of Delivery of Domestic Water to Each Lot	Central Water Distribution System
Specify Method of Deliver of Irrigation Water to Each Lot	Pipeline from Moore Ditch Headgate to Irrigation System Pipeline to Each Lot
<u>Maximum</u> Landscape/Amenity Irrigation	10,000 Square Feet Per Lot
Specify Sewage Disposal Method	Septic Tank and Leaching Field
The Lot Owner is not Permitted to Develop an Exempt Well on Lot.	
Note: Lot 1 has an historic well located in Section 5 that is not subject to Decree W-3262.	

- f. West Divide Water Conservancy District Contract. The Augmentation Plan recognizes that there is no senior demand for water from the Garfield Creek during the non-irrigation season, so there is no requirement to replace the Subdivision's depletions during that season to that system. Neither is there currently any non-irrigation season senior call from Colorado River that would call out the Subdivision's junior well rights. If for any reason such a call should materialize, provision has been made through a contract, with West Divide Water Conservancy District to deliver up to one (1) acre foot of stored water to the Colorado River. Source: Wright Water Engineers letter to Gene R. Hilton, "Rapids on the Colorado Water Supply Analysis," dated April 7, 2006, a copy of which is on file with the Association.

The non-irrigation season is the period from October 1 through April 14. The West Divide Water Conservancy District Contract, referenced in the Wright Water Engineering report, has been amended to increase the amount of water available for release from storage in Reudi Reservoir, from one (1) acre foot to two (2) acre feet of water. The released water replaces water pumped from the Rapids Wells and consumed in the Rapids on the Colorado Subdivision during the non-irrigation season.

3. Plat Disclosure. The Amended Final Plat to adjusted lot lines near the Rapids Ponds, and was recorded October 24, 2003 under Reception No. 639203. The Final Plat and the Amended Final Plat contain the following notice:

To all purchasers of home sites within Rapids on the Colorado Subdivision:

YOU ARE HEREBY NOTIFIED that under applicable Garfield County regulations you may not commence construction of a residence within unincorporated Garfield County, including the Rapids on the Colorado Subdivision, prior to issuance of a Building Permit by Garfield County.

4. **Individual Sewage Disposal System.** Each dwelling structure shall contain at least one fully equipped bathroom and all sewage therefrom shall be disposed of by means of an Individual Sewage Disposal System ("ISDS") designed by an engineer licensed in the State of Colorado. Each ISDS system shall be located so as to avoid impairment during a 100-year flood event and constructed in a manner to facilitate ready access for maintenance. Each Lot Owner shall be responsible for the construction, operation and management of their ISDS system.
5. **Site Specific Geotechnical Evaluations and Designs.** All Rapids on the Colorado Subdivision Lots shall require site specific geotechnical studies, an engineered foundation design and percolation tests for use in the design of an Individual Sewage Disposal System. The tests and designs must be performed by an engineer licensed in the State of Colorado before a building permit will be issued.
6. **Underground Utility Lines.** With respect to the new construction or extension of any utilities, all water, sewer, gas, electrical, telephone, cable television, irrigation water lines and other utility pipes or lines within the limits of the Subdivision shall be buried underground and not be carried on overhead poles or above the surface of the ground.
7. **Mining, Drilling, or Quarrying.** Any Owner of a Lot shall not mine, quarry, tunnel, excavate, or drill for any substance within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, within the limits of the Subdivision. Individual water wells shall not be permitted on any Lot, except on that part of Lot 1 that is located in Section 5, Township 6 South, Range 91 West 6th P.M., that has an existing historic well exempt from the Water Augmentation Plan. No Owner shall be permitted to drill for water on their Lot. The Association may drill supplemental water wells or replacement water wells on Open Space areas or utility easements within the Subdivision consistent with the existing water decrees. Water wells may also be drilled as reserved in the Memorandum of Agreement (Service Agreement) recorded as Reception No. 592975 in Book 1308 at Page 554 of the Records of the Clerk and Recorder, Garfield County, Colorado.
8. **Adjacent Agricultural Uses.** Garfield County subdivision regulations protect agricultural operations in the County by mandating that historic agricultural uses of property adjacent to the Subdivision shall be deemed compatible with the rural residential character of the Subdivision. No Owner may object to the dust, odors or noise associated with normal agricultural uses of said adjacent property as noxious or offensive. The Association shall not attempt to enjoin adjacent landowners from customary agricultural practices merely because an Owner has registered a complaint.

9. **Disclaimer Regarding Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Subdivision that are designed to make occupancy of the Subdivision more secure than it otherwise might be. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within or around Subdivision, 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 or security system, if any, cannot be compromised or circumvented, or that any such systems will in any case be guaranteed prevent loss.
10. **Disclaimer Regarding Naturally Occurring Radioactive Material Disclosure and Release.** In certain locations in and around Colorado, above average levels of naturally occurring radioactive material ("NORM") have been detected. Declarant has not made nor does this Declaration make or contain any representation or warranty, express or implied, concerning the presence, absence, or level of NORM in the soil beneath or adjacent to the Subdivision.
11. **Disclaimer Regarding Radon.** The Colorado Department of Health and the United States Environmental Protection Agency (the "EPA") have detected elevated levels of naturally occurring radon gas in certain residential structures throughout Colorado and that the EPA has voiced concerns about the possible adverse effects on human health from long-term exposure to high levels of radon gas. Neither the Association nor the Declarant is qualified to evaluate all aspects of this very complex and constantly changing issue. Owners may conduct their own investigation and consult with such experts as the Unit Owner deems appropriate in order to determine the level of radon gas at each Lot, and to determine any mitigation the Owner desires to implement at the Unit Owner's sole cost, risk and expense. Owners acknowledge that the Association is under no obligation with respect to the radon gas levels detected in the Subdivision, and nothing contained herein shall create, or be interpreted as a representation or warranty, express or implied, concerning the presence or absence of radon in the soils beneath or adjacent to the Unit or the Subdivision. Each Owner hereby releases the Association and the Declarant from any and all liability with respect to the matters discussed in the foregoing disclosure.
12. **Disclaimer Regarding Mold Related Hazards.** The presence of some types of mold may cause health problems in certain individuals. The Unit Owners agree that neither the Declarant nor the Board shall be responsible for the potential or actual existence of mold contamination at the Subdivision, or any resulting injury. All Unit Owners with concerns about the likelihood of mold at the Subdivision and the potential impacts of mold are directed to the mold informational pamphlets maintained on the EPA website at <http://www.epa.gov/mold/index.html> for additional information regarding mold.
13. **No Development Representation.** This Declaration does not, and is not intended to make any representation regarding development either within or outside of the Subdivision, nor create an obligation to include the Additional Real Estate. Each Owner is encouraged to

investigate area development as such Owner deems necessary and appropriate to the purchase a Lot.

14. **Disclaimer Regarding Expansive Soils.** Certain soils within the State of Colorado consist of both expansive soils and low-density soils, which may result in shifting or other movement of building foundations or otherwise result in damage to the structural or other parts of buildings if the improvements and the property upon which it or they sit are not properly maintained. Owner accepts the soil conditions of the Subdivision without any express or implied warranties. If the Owner requires further information regarding expansive soils Owner is referred to Colorado Publication No. 43, Guide to Swelling Soils for Colorado Homeowners, as such publication may be amended from time to time.

ARTICLE VIII - COLLECTION OF ASSESSMENTS ENFORCEMENT.

1. **Assessments.** All Lot Owners, by acceptance of a deed to a Lot including without limitation public trustee, sheriffs or similar deed, is deemed to covenant and agree and shall be obligated to pay any and all assessments lawfully imposed by the Executive Board of the Association. Assessments may be lawfully imposed for any items of common expense to include all expenses and costs of
- (i) managing, maintaining, improving, operating, preserving and repairing Common Elements and Common Facilities, that shall include, without limitation;
 - (ii) maintenance of roads and easements within and adjacent to the Subdivision;
 - (iii) annual fee due to West Divide Water Conservancy District pursuant the Contract identified in the memorandum Recorded April 28, 1998 in Book 1064 at Page 699, as amended.
 - (iv) the expenses and costs of operating, maintaining, repairing and replacing the Subdivision's potable and irrigation water systems;
 - (v) any expenses of the ACC;
 - (vi) the cost of insurance, accounting, legal, engineering, consulting and employees providing management functions to the Association;
 - (vii) Association operating expenses;
 - (viii) periodic water assessments (to the extent not individually metered);
 - (ix) such other costs or expenses incurred in connection with Association management.

Such assessments shall be deemed General Assessments and shall be borne based on the Allocated Interest for each Owner. As used herein, each Owner's Allocated Interest shall be a fraction formed by the number of Lots purchased and held by the Lot Owner (numerator) and the number of Lots in the Subdivision (denominator).

2. **Contingency and Reserve Funds.** The Executive Board shall, consistent with the Act, establish contingency and reserve funds for the maintenance and improvement of the Common Elements, and any other Association anticipated costs and expenses to be incurred in pursuit of its purpose. Contingency and reserve funds shall be in such an amount as the Executive Board may deem necessary and appropriate for the aforesaid purposes. Each Owner shall be required to pay the Allocated Interest for such costs. The Executive Board shall have the right during any calendar year to levy and assess against all of the Owners a special assessment for such purpose or purposes, in accordance with these Covenants, or the Articles or Bylaws of the Association, as may be necessary.
3. **Budget.** Within thirty (30) days after the adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Lot Owners, and shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. If an electronic means of providing the budget is available and an Owner requests that the Association send budget information by electronic mail, the Association shall make a good faith effort to provide the budget electronically to all Lot Owners who request the budget electronically, and who have furnished the Association with their electronic mail addresses. Unless at the meeting to consider the budget Lot Owners entitled to cast seventy five percent (75%) of the votes of the Association reject the budget, the budget is ratified. If the proposed budget is rejected, the periodic budget last proposed by the Board and not vetoed by the Lot Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Lot Owners. The Board shall adopt a budget for the Common Expenses and shall submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Board shall levy and assess the Annual Assessments in accordance with the annual budget.
4. **Annual Assessments.** Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Board shall from time to time determine to be paid by all of the Owners consistent with the approved Budget. Estimated Common Expenses shall include without limitation those items listed in Article VIII, Section 1, and such other expenses identified and budgeted for by the Board consistent with this Declaration.
5. **Apportionment of Annual Assessments.** The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of Assessment, provided, however, that the Association reserves the right

to allocate all expenses relating to fewer than all of the Units to the Owners of those affected Units only. Common Expenses may be apportioned as follows:

- (a) Any Common Expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited; and
- (b) The costs of insurance may be assessed in proportion to risk; and
- (c) The costs of utilities may be assessed in proportion to usage; and
- (d) If any Common Expense is caused by the misconduct of any Lot Owner, the Association may assess that expense exclusively against such Owner's Unit; and
- (e) Fees, charges, taxes, impositions, late charges, fines, collection costs, including reasonable attorney fees, and interest charged against an Owner are enforceable as default assessments against the Lot Owner.

6. **Special Assessments.** In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 6 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other Sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Lot Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work, and any extraordinary insurance costs incurred as a result of the value of a particular Lot, or the actions of a particular Owner or Owner's Related User including any agent, employee, invitee, licensee, guest or tenant. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

7. **Allocation Between Improved and Unimproved Units.** In the 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 Lot upon which a completed dwelling for which a temporary or permanent certificate of occupancy has issued) may be assessed differently than "Unimproved Units" (i.e., any Lot for which a temporary or permanent certificate of occupancy has not yet been issued), to reflect the fact that such Unimproved Units are not using the Common Elements and incurring Common Expenses, 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 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.

8. **Lien for Non-Payment of Assessments or Penalties.** All sums assessed by the Executive Board, including without limitation the share of common expense assessments chargeable to any Lot Owner, any fines which may be levied on a Lot Owner, any penalties assessed pursuant to paragraph 4 below, and any unpaid utility fees and assessments charged to a Lot Owner shall constitute a lien against such Lot superior (prior) to all other liens and encumbrances as provided for in the Act, excepting only:
- a. Tax and special assessment liens on the Lots in favor of any governmental assessing unit.
 - b. All sums unpaid on a first mortgage of record, including any unpaid obligatory sums as may be provided by encumbrance, provided the Association shall have a lien priority as provided for in the Act.
 - c. Each Owner hereby agrees that the Association's lien on a Lot for Assessments as hereinabove described shall be superior to any Lot exemption as is now or may hereafter be provided by state or federal law and each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot within the Subdivision shall signify such grantee's waiver of any such exemption. Any recorded lien for non-payment of the common expenses may be released by recording a release of lien executed by a member of the Executive Board. To evidence such lien, the Executive Board shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot, and its legal description. Such a notice shall be signed by one (1) member of the Executive Board and shall be recorded in the Office of the Clerk and Recorder of the County of Garfield, Colorado. Such lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property, upon the recording of a notice of claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Owner shall also be required to pay to the Association any additional assessments against the Lot during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Executive Board, for the Association, shall have the power to bid on the Lot at foreclosure sale and acquire and hold, lease, mortgage, and convey same. The Association, at its election, and in addition to any other remedies it may have at law or in equity, may also sue an Owner personally to collect any monies

owed the Association. If a Lot Owner fails to pay promptly any Assessment pertaining to the water system, in addition to the remedies set forth above, the Association shall have the right to turn off the water to said Lot.

9. **Enforcement Actions and Penalties.** The Association, acting by and through its Executive Board, shall have the right to prosecute any action to enforce the provisions of all of these Covenants by injunctive relief, on behalf of itself and all or part of the Owners of the lands within the Subdivision consistent with the Act and the applicable Board policies. Each Owner of land within the Subdivision, including the Association, shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these Covenants, provided such Owner first notifies the Board of its intent to prosecute and subject to the Dispute Resolution process outlined herein. The Executive Board shall be entitled to assess penalties for late payment of assessments due the Association and to collect interest thereon at rates to be determined from time to time by the Executive Board but not to exceed 1.5 percent per month. After thirty (30) days written notice to any Owner of a violation of these Covenants, and the Owner's failure to eliminate or cure said violation, the Association may levy, in addition to the other remedies set forth herein, a daily violation penalty duly established by the Board assessed for the continuing violation.
10. **Limitations of Actions.** In the event any construction or alteration or landscaping work is commenced upon any of the lands in the Subdivision in violation of these Covenants and no action is commenced within one (1) year thereafter to restrain such violation, then injunctive or equitable relief shall be denied, but an action for damages shall still be available to any party aggrieved. This one-year limitation shall not apply to injunctive or equitable relief for other violations of these Covenants.

ARTICLE IX - INSURANCE

1. **Types of insurance.** The Association shall obtain and keep in full force and effect the following insurance coverage as the Association deems appropriate consistent with the insurance obligations in the Act:
 - a. Public liability and property damage insurance, including medical payments insurance, in an amount to be determined by the Board, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the ownership, operation, maintenance or other use of Association property. This policy shall also cover operation of automobiles or other vehicles or equipment on behalf of the Association.
 - b. Worker's compensation and employer's liability insurance in the amounts and in the forms required by law.

- c. The Executive Board, at its discretion, may elect to secure fidelity coverage against the dishonesty of employees, destruction or disappearance of money or securities, and forgery. Any such policy shall also cover persons who serve the Association without compensation.
 - d. Coverage for members of the Board and officers of the Association, including committee members, against libel, slander, false arrest, invasion of privacy, errors and omissions, and other forms of liability generally covered in officers and directors liability policies.
 - e. Coverage against such other risks of a similar or dissimilar nature as the Board deems appropriate
2. **Premium Common Expense.** Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses. To the extent any insurance policy identifies the premium amount associated with or attributed directly to any Unit, the cost of the insurance premium shall be allocated to the insured Units as an Individual Purpose Assessment.

ARTICLE X - SPECIAL DECLARANT RIGHTS

1. **Development Rights and Special Declarant Rights.** All development rights set forth in this section are applicable between the Declarant (Rapids Development Corporation), its successors and assigns, and any Lot Owner. These Development Rights apply to the real estate contained within the Property. Nothing herein shall discharge the Declarant or others exercising development rights to obtain any required approvals from the appropriate governmental entities and comply with any and all resolutions, ordinances, statutes and law relating to the exercise of such development rights. If these development rights are exercised in any portion of the Property, the Declarant is not precluded from exercising development rights in any portion of the remainder of the property at a later date. The Declarant hereby reserves unto itself, its agents, employees, contractees and assigns, the following development rights and other special Declarant rights for exercise within twenty (20) years of the date of this Amended and Restated Declaration of Protective Covenants:
- a. **Boundaries.** The right to relocate boundaries between adjoining Units not yet conveyed by Declarant, enlarge the Common Elements, to enlarge or reduce or diminish the size of Units not yet conveyed by Declarant, or to complete or make improvements, as the same may be indicated on the Amended Plat.
 - b. **Additional Units.** the right to create or construct additional Units, Common Elements and or to convert Units not yet conveyed by Declarant into Common Elements, all consistent with the obligations contained herein.

- c. Agency Requirements. The right to amend the Declaration in accordance with the Act to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, including requirements by any Governmental or private agency that insures or grants a mortgage on a Unit.
- d. Development Property. The right to subject and add to the provisions of this Declaration the specified real property identified as the Additional Real Property described on Exhibit C hereto (the "**Development Property**").
- e. Right to Amend Declaration and Plat. The right to amend or supplement the Declaration and Plat in connection with the exercise of its development rights. Such amendments shall conform to the requirements of the Act and this Declaration.
- f. Activities of Declarant. The right to conduct certain activities which, notwithstanding any provision contained in these Covenants to the contrary, shall include the right to maintain a sales office, management office and other such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or necessary for the construction, sale and management of any units or Lots. Such facilities may include without limitation a business office, storage area, construction yards, signs, model units, sales offices, construction office, parking areas and lighting and temporary parking structures for all prospective purchasers of Lots or units.
 - i. Easements, Ingress and Egress. The right to use all easements shown or described on the Plat or otherwise conveyed to the Association and to use such easements as in Declarant's discretion may be necessary to the exercise of those rights described in this section.

Furthermore, Declarant hereby reserves the right of ingress and egress in and through any Lot for the purpose of any necessary, required or requested construction, removal of excess stockpiled soil, maintenance, refurbishment or repair of said Lots or any part thereof.

- ii. Easements and Water Rights. The right to use the reserved excess capacity of the domestic and irrigation water systems, water rights, augmentation pond, wells, ditches and structures, all pumps, pipelines, ditches, headgates, water tanks, measuring devices, meters or other facilities associated therewith, including any facilities necessary for the exercise of any existing or subsequently decreed water rights or augmentation plan together with easements associated therewith for the construction, erection, maintenance, operation, use, expansion, repair and replacement of the water rights and/or facilities, and to add to such water system or water rights, to amend or change any water court decree, provided any change shall be consistent with the existing requirements to provide Subdivision water.

- iii. Use Agreements. The right to enter into, execute, amend and otherwise deal with contracts and agreements for the design, construction, use, lease, repair, maintenance or regulation of Common Facilities.
 - g. Right by Statute or Recorded Document. Any other rights as allowed by statute or as may be reserved by documents on record with the Garfield County Clerk and Recorder.
2. **Development Rights**. All persons purchasing Lots in the Subdivision, or interests in the Additional Real Estate if included in the Subdivision, shall take ownership subject to the development rights of the Declarant and, as such, agree to not object to exercise of the Declarant's Development Rights.
3. **Rights Transferable**. Any special Declarant right or additional right created or reserved under this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the records of Garfield County, Colorado. Such instrument shall be executed by the Declarant and the transferee.
4. **Severability**. The invalidation of any one of these Covenants by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect.

ARTICLE XI MORTGAGEE'S RIGHTS

1. **First Mortgagee's Interest**. The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Lots. "**First Mortgagee**" as used herein means any Mortgage which constitutes a first lien upon a Unit subject only to governmental liens, the lien for real property taxes, and any other liens made senior to such First Mortgage by Colorado law. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and other Governing Documents.
2. **Title Taken by Mortgagee**. Any First Mortgagee who obtains title to the Unit pursuant to remedies exercised in enforcing the First Mortgage, including foreclosure of the First Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit is acquired, provided any Agency First Mortgagee or Agency insurer's obligation to reimburse the Association for dues shall not exceed six (6) months of the Unit's unpaid regularly budgeted dues or charges, and associated costs of collection, including reasonable attorney fees. Any Mortgagee that takes title to a Unit shall be responsible for payment of all Assessments that become due and owing during the Mortgagee's period of ownership.
3. **Distribution of Insurance or Condemnation Proceeds**. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for

losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

4. **Right to Pay Taxes and Charges.** Mortgagees who hold First Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements.
5. **Notice of Action.** Any Mortgagee that holds a First Mortgage, upon written request to the Association, will be entitled to timely written notice (or copies) of all of the following:
 - a. Copies of the current Declaration, any related documents (such as bylaws and rules and regulations) and copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Board to the Declarant and any other Owner of Property encumbered by any lien in favor of the First Mortgagee;
 - b. Any proposed amendment of the Governing Documents effecting a change in (i) the boundaries of the mortgaged Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements in the Subdivision or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Unit or (iv) a material change to the Governing Documents that would adversely impact or affect the interests of the Mortgagee;
 - c. Any proposed termination of the common interest Subdivision;
 - d. Notice of any pending acquisition of any portion of the Property or any portion thereof by means of condemnation or eminent domain, promptly after the Association has received written notice of any such proceedings
 - e. Any casualty loss that affects a material portion of the Property or that affects any Unit on which there is a First Mortgage held by such Mortgagee;
 - f. Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;
 - g. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article IX;
 - h. Current financial statements of the Association which shall be prepared annually for the Association and distributed or made available to the Owners;
 - i. The right to examine the books and records of the Association at any reasonable time upon prior notice;

- j. Notice of any threatened or pending condemnation of Common Elements, and any portion of the Property encumbered by any lien in favor of the Mortgagee that holds a First Mortgage;
 - k. Notice of any judgment rendered against the Association; and
 - l. Notice of any proposed sale, encumbrance, or transfer of Common Elements.
6. **Mortgagee Approval.** If this Declaration or any Governing Documents require the approval of any Mortgagee then, if any Mortgagee fails to respond to any written proposal for such approval within sixty (60) days after the Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee.
7. **Action by Mortgagee.** If this Declaration or any Governing Documents require the approval of any Mortgagee then, if any Mortgagee fails to respond to any written proposal for such approval within sixty (60) days after the Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee.

ARTICLE XII - GENERAL PROVISIONS

1. **Covenants to Run.** All of the covenants contained in this Declaration shall be a burden on the title to all of the property and lands within the Subdivision, and the benefits thereof shall inure to the Owners of the lands in the Subdivision and the benefits, and burdens of all said covenants shall run with the title to all of the lands in the Subdivision.
2. **Termination of Covenants.** In the event these Covenants have not been sooner lawfully terminated pursuant to any applicable laws of the State of Colorado and Garfield County, Colorado, and the provisions herein contained, these Covenants may be terminated on January 1 of the year 2035 by a vote of seventy-five percent (75%) of the votes entitled to be cast by the members of the Association. If these Covenants are not so terminated, then they shall continue to be in full force and effect for successive twenty-five (25) year periods unless, at the close of a 25-year period, the Covenants are terminated by a vote of seventy-five percent (75%) of the votes entitled to be cast by the members of the Association at a meeting of the members duly held. In the event of any such termination by the members, a properly certified copy of the resolution of termination shall be placed on record in Garfield County, Colorado, not more than six (6) months after the meeting at which such vote is cast.

3. **Amendment of Covenants.** These Covenants may be amended by a vote of sixty seven (67%) of the votes entitled to be cast by the members of the Association. The votes must be cast at a meeting of the members duly held, provided a properly certified copy of the resolution of amendment be placed on record in Garfield County, Colorado, no more than six (6) months after said meeting. Every amendment to these Covenants must be recorded in the office of the Garfield County Clerk and Recorder and shall be effective only upon recording.
4. **Severability.** Should any part or parts of these Covenants be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining covenants
5. **Paragraph Headings and Underlining.** The paragraph headings and underlining within this instrument are for convenience only and shall not be construed to be a specific part of the covenants contained herein.
6. **Limited Liability.** The Association and the Board shall not be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. The Owners jointly and severally agree to indemnify the Association and the Board against loss resulting from such action or failure to act if the Association and the Board acted or failed to act in good faith and without malice.

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DECLARANT

Rapids Development Corporation, a Colorado corporation

By Gene R. Hilton
Gene R. Hilton, President

The Rapids on the Colorado Homeowners Association, a Colorado nonprofit corporation

By Gene R. Hilton
Gene R. Hilton, President

STATE OF COLORADO)
COUNTY OF Arapahoe)

ss.

The foregoing instrument was acknowledged before me this 27th day of September, 2015, by Gene R. Hilton, as President of Rapids Development Corporation.

Witness my hand and official seal.

My commission expires:

Raeleen B Jamieson
Notary Public

RAELEEN B JAMIESON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014027683
MY COMMISSION EXPIRES SEPTEMBER 14, 2017

STATE OF COLORADO)
COUNTY OF Arapahoe)

ss.

The foregoing instrument was acknowledged before me this 27th day of September, 2015, by Gene R. Hilton, as President of The Rapids on the Colorado Homeowners Association.

Witness my hand and official seal.

My commission expires:

Raeleen B Jamieson
Notary Public

RAELEEN B JAMIESON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014027683
MY COMMISSION EXPIRES SEPTEMBER 14, 2017

EXHIBIT A -

Legal Description - Rapids on the Colorado Subdivision

A tract of land situated in the SW1/4 of Section 4 and the SE1/4 of Section 5, Township 6 South, Range 91 West of the 6th P.M. described as follows:

Beginning at the Southwest Corner of said Section 4;

thence N 0° 50' 00" W 438.10 feet along the West line of said Section 4 and along the Easterly line of that parcel of land described in Book 570 at Page 266 in the Office of the Garfield County Clerk and Recorder;

thence N 75° 43' 18" W 101.89 feet;

thence N 17° 08' 41" W 115.59 feet;

thence N 53° 47' 08" W 177.75 feet to the center of the Colorado River;

thence along the center of said river N 23° 43' 15" E 339.10 feet;

thence N 23° 43' 20" E 310.00 feet;

thence N 35° 08' 15" E 419.25 feet;

thence N 42° 56' 13" E 499.62 feet;

thence N 65° 01' 47" E 404.40 feet;

thence N 71° 35' 12" E 503.50 feet;

thence N 84° 15' 20" E 284.99 feet;

thence S 81° 33' 38" E 244.41 feet;

thence S 58° 02' 47" E 266.82 feet;

thence S 68° 42' 11" E 480.81 feet to the west line of the Brannan Subdivision Exemption No. 1;

thence along said west line and departing the center of said Colorado River S 0° 50' 54" E 520.60 feet to the Northeast Corner of that parcel described in Book 527 at Page 743 as Reception No. 293881;

thence along the boundary of said parcel S 78° 22' 10" W 328.61 feet;

thence S 8° 40' 15" E 370.92 feet to a point on the Northerly Right-Of-Way of County Road No. 335;

thence along said Right-Of-Way S 79° 02' 15" W 272.84 feet;

thence S 71° 43' 27" W 273.76 feet;

thence S 68° 13' 04" W 264.74 feet;

thence S 64° 01' 23" W 296.11 feet;

thence departing said Right-Of-Way S 0° 14' 42" E 653.78 feet to a point on the South line of said Section 4;

thence S 89° 20' 08" W 1308.98 feet; to the POINT OF BEGINNING; said described tract containing 97.214 acres, more or less.

EXHIBIT B - PERMITTED EXCEPTIONS

(A) UNPATENTED MINING CLAIMS; (B) RESERVATIONS OR EXCEPTIONS IN PATENTS OR IN ACTS AUTHORIZING THE ISSUANCE THEREOF; (C) WATER RIGHTS, CLAIMS OR TITLE TO WATER.

RIGHT OF PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED MARCH 15, 1898, IN BOOK 12 AT PAGE 481, RECORDED OCTOBER 27, 1902 IN BOOK 56 AT PAGE 464, RECORDED OCTOBER 2, 1944 IN BOOK 73 AT PAGE 225, AND RECORDED APRIL 16, 1924 IN BOOK 73 AT PAGE 180

RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED MARCH 15, 1898, IN BOOK 12 AT PAGE 481, RECORDED OCTOBER 27, 1902 IN BOOK 56 AT PAGE 464, RECORDED OCTOBER 2, 1944 IN BOOK 73 AT PAGE 225, RECORDED APRIL 16, 1924 IN BOOK 73 AT PAGE 180 AND RECORDED APRIL 16, 1924 IN BOOK 112 AT PAGE 578.

ALL COAL RESERVED BY THE UNITED STATES OR TO PERSONS AUTHORIZED BY IT, THE RIGHT TO PROSPECT FOR, MINE AND REMOVE COAL FROM THE SAME UPON COMPLIANCE WITH THE CONDITIONS OF AND SUBJECT TO THE LIMITATIONS OF THE ACT OF JUNE 22, 1910 (36 STAT. 583) AS RESERVED IN PATENT RECORDED APRIL 16, 1924 IN BOOK 112 AT PAGE 578

UNDIVIDED ONE HALF INTEREST IN ALL OIL, GAS AND OTHER MINERALS RESERVED BY THE FEDERAL LAND BANK OF WICHITA IN DEED RECORDED OCTOBER 30, 1943 IN BOOK 208 AT PAGE 463, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.

RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED NOVEMBER 01, 1974, IN BOOK 466 AT PAGE 29

EASEMENTS AND RIGHTS OF WAY FOR THE HUDSON AND SULLIVAN DITCH AS DISCLOSED BY INSTRUMENT RECORDED SEPTEMBER 8, 1888 IN BOOK 19 AT PAGE 204.

EASEMENTS AND RIGHTS OF WAY FOR THE MOORE DITCH, READ AND HUDSON DITCH AS DISCLOSED IN INSTRUMENTS RECORDED OCTOBER 29, 1886 AS RECEPTION NO. 3253, RECORDED JANUARY 30, 1888 AS RECEPTION NO. 6201 AND RECORDED DECEMBER 29, 1887 IN BOOK 14 AT PAGE 208.

EASEMENTS AND RIGHTS OF WAY FOR ROADS AS SHOWN IN ROADVIEWER'S REPORTS RECORDED JULY 7, 1890 AS RECEPTION NO. 10567, RECORDED JULY 25, 1894 AS RECEPTION NO. 17518 AND BY INSTRUMENT RECORDED JULY 24, 1894 IN BOOK 38 AT PAGE 124.

EASEMENTS AND RIGHTS OF WAY AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED FEBRUARY 13, 1967 IN BOOK 382 AT PAGE 187.

ANY QUESTION, DISPUTE OR ADVERSE CLAIMS AS TO ANY LOSS OR GAIN OF LAND AS A RESULT OF ANY CHANGE IN THE RIVER BED LOCATION BY NATURAL OR OTHER THAN NATURAL CAUSES, OR ALTERATION THROUGH ANY CAUSE, NATURAL OR

UNNATURAL, OF THE CENTER THREAD, BANK, CHANNEL OR FLOW OF WATERS IN THE COLORADO RIVER LYING WITHIN SUBJECT LAND; AND ANY QUESTION AS TO THE LOCATION OF SUCH CENTER THREAD, BED, BANK OR CHANNEL AS A LEGAL DESCRIPTION MONUMENT OR MARKER FOR PURPOSES OF DESCRIBING OR LOCATING SUBJECT LANDS.

TERMS, CONDITIONS AND PROVISIONS OF GARFIELD COUNTY RESOLUTION NO. 96-70 RECORDED OCTOBER 17, 1996 IN BOOK 996 AT PAGE 665.

TERMS, CONDITIONS AND PROVISIONS OF GARFIELD COUNTY RESOLUTION NO. 97-26 RECORDED APRIL 08, 1997 IN BOOK 1014 AT PAGE 808.

THE EFFECT OF THE RIGHTS OF OTHERS IN AND TO THE LANDS LYING SOUTHERLY OF THE THREAD OF THE MEANDER LINE OF THE COLORADO RIVER AND THE LANDS LYING NORTHERLY OF THE SOUTH BANK OF THE THREAD OF THE MEANDER LINE.

TERMS, CONDITIONS, AND PROVISIONS OF SUBDIVIDER'S AGREEMENT AS CONTAINED IN INSTRUMENT RECORDED SEPTEMBER 09, 1997, IN BOOK 1032 AT PAGE 948.

RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN UNLESS AND ONLY TO THE EXTENT THAT SAID COVENANT (A) IS EXEMPT UNDER CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS, AS CONTAINED IN INSTRUMENT RECORDED SEPTEMBER 09, 1997, IN BOOK 1032 AT PAGE 963.

TERMS, CONDITIONS AND PROVISIONS OF DEED TO THE RAPIDS ON COLORADO HOMEOWNERS ASSOCIATION RECORDED SEPTEMBER 09, 1997 IN BOOK 1032 AT PAGE 961.

TERMS, CONDITIONS AND PROVISIONS OF WEST DIVIDE WATER CONSERVANCY DISTRICT MEMORANDUM OF WATER ALLOTMENT CONTRACT RECORDED APRIL 28, 1998 IN BOOK 1064 AT PAGE 692.

TERMS, CONDITIONS AND PROVISIONS OF MEMORANDUM OF AGREEMENT RECORDED DECEMBER 04, 2001 IN BOOK 1308 AT PAGE 554.

TERMS, CONDITIONS AND PROVISIONS OF GRANT OF EASEMENT RECORDED DECEMBER 04, 2001 IN BOOK 1308 AT PAGE 560 AND QUIT CLAIM DEED ASSOCIATED WITH GRANT OF EASEMENT RECORDED DECEMBER 4, 2001 IN BOOK 1308 AT PAGE 564.

OIL AND GAS LEASE RECORDED FEBRUARY 11, 2008 UNDER RECEPTION NO. 742681 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTEREST THEREIN.

TERMS, CONDITIONS AND PROVISIONS OF MINERAL DEED RECORDED DECEMBER 31, 2001 IN BOOK 1316 AT PAGE 989.

EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF THE RAPIDS ON THE COLORADO RECORDED SEPTEMBER 9, 1997, UNDER RECEPTION NO. 513353, AND THE AMENDED FINAL PLAT RECORDED OCTOBER 24, 2003 UNDER RECEPTION NO. 639203.

TERMS, CONDITIONS AND PROVISIONS OF EASEMENT RECORDED SEPTEMBER 29, 2011 AT RECEPTION NO. 803683.

TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. 15-BOE-040 RECORDED AUGUST 03, 2015 AT RECEPTION NO. 866224.

ALL OIL, GAS, MINERALS AND OTHER MINERAL RIGHTS AS RESERVED IN INSTRUMENT RECORDED NOVEMBER 25, 2014 UNDER RECEPTION NO. 856420, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.

EXHIBIT C - COLORADO RIVER TRAIL ACCESS EASEMENT

LEGAL DESCRIPTION - COLORADO RIVER TRAIL ACCESS EASEMENTS

Three easements situated in the SW1/4 of Section 4 and the SE1/4 of Section 5, Township 6 South, Range 91 West of the 6th P.M., Garfield County, Colorado, and ALSO situated within the RAPIDS ON THE COLORADO SUBDIVISION, as recorded in the Office of the Clerk and Recorder of Garfield County, Colorado as "AMENDED FINAL PLAT RAPIDS ON THE COLORADO SUBDIVISION" at Reception No. 639203, described as follows:

COLORADO RIVER TRAIL EASEMENT

An access easement for the exclusive use by Rapids on the Colorado Subdivision Lot Owners, their Lessees and guests, beginning at a point on the easterly line of Lot 16 of the RAPIDS ON THE COLORADO SUBDIVISION, whence the southeast corner of Lot 16 bears S 19°08'27" W 204.27 FEET TO THE POINT OF BEGINNING;

THENCE N 19°08'27" E 270.00 FEET TO THE CENTERLINE OF THE COLORADO RIVER;

THENCE WESTERLY ALONG THE SAID CENTER LINE THE FOLLOWING COURSES;

N 58°02'47 W 180.81 FEET;

THENCE N 81°33'38" W 244.41 FEET;

THENCE S 84°15'20" W 284.99 FEET;

THENCE S 71°35'12" W 503.50 FEET;

THENCE S 65°01'47" W 404.40 FEET;

THENCE S 42°56'13" W 499.62 FEET;

THENCE S 35°08'15" W 419.25 FEET;

THENCE S 23°43'20" W 310.00 FEET;

THENCE S 23°43'15" W 93.18 FEET;

THENCE S 66°16'42" E 225.00 FEET;

TO A POINT ON THE WESTERLY LINE OF LOT 3;

THENCE N 20°33'24" E 181.19 FEET;

THENCE N 23°56'22" E 310.92 FEET;

THENCE N 38°51'49" E 464.07 FEET;

THENCE N 51°31'02" E 140.26 FEET

THENCE N 38°04'05" E 158.70 FEET;

THENCE N 63°13'45" E 347.21 FEET;

THENCE N 80°50'22" E 357.98 FEET;

THENCE N 89°38'17" E 278.94 FEET;

THENCE S 75°43'48" E 170.36 FEET;

THENCE S 71°01'07" E 186.23 FEET TO THE POINT OF BEGINNING

EAST EASEMENT FROM RAPIDS VIEW LANE TO THE COLORADO RIVER

An access easement for the exclusive use by Rapids on the Colorado Subdivision Lot Owners, their Lessees and guests, of twenty (20) feet width lying 10 feet on each side of the following described centerline:

Beginning at a point on the northerly right of way line of Rapids View Lane, being the Southeast corner of Lot 15, thence N 12°45'48" E 209.46 feet to the Colorado River Trail Easement described above.

WEST EASEMENT FROM RAPIDS VIEW LANE TO THE COLORADO RIVER

An access easement for the exclusive use by Rapids on the Colorado Subdivision Lot Owners, their Lessees and guests, of twenty (20) feet width lying 10 feet on each side of the following described centerline:

Beginning at a point on the northerly right of way line of Rapids View Lane, being the Southeast corner of Lot 3, thence N 65°56'22"E 269.60 feet to the Colorado River Trail Easement described above.

EXHIBIT D - ADDITIONAL REAL ESTATE

Legal Description

A tract of land situated in the SE1/4SW1/4 and the SW1/4SE1/4 of Section 4 and the NW1/4NE1/4 of Section 9 all in Township 6 South, Range 91 West of the 6th P.M. said tract being a portion of that tract described in Book 479 at Page 423

and that tract described in Exhibit "A" in Book 713 at Page 613 in the records of the Garfield County Clerk and Recorder's Office being more particularly describe as follows:

Beginning at a point on the Northerly right of way of County Road 335 said point also being on the west line of said SE1/4SW1/4 whence the Southwest Corner of said Section 4 bears S 62° 52' 46" W 1467.44 feet;

thence along said right of way on the following courses N 64° 01' 23" E 296.11 feet; thence N 68° 13' 04" E 264.74 feet;

thence N 71° 43' 27" E 273.73 feet;

thence N 79° 02' 15" E 272.84 feet;

thence S 08° 40' 15" E 30.04 feet;

thence along a curve to the right with an arc length of 327.03 feet, a radius of 419.99 feet, a central angle of 44° 36' 48"; a chord bearing of S 78° 39' 21" E, a chord length of 318.83 feet,

thence S 56° 20' 56" E 284.92 feet;

thence along a curve to the left with an arc length of 256.64 feet, a radius of 161.32 feet, a central angle of 91° 08' 53"; a chord bearing of N 78° 04' 37" E, a chord length of 230.42 feet,

thence N 32° 30' 10" E 91.30 feet;

thence along a curve to the right with an arc length of 282.45 feet, a radius of 389.49 feet, a central angle of 41° 33' 03"; a chord bearing of N 53° 16' 42" E, a chord length of 276.31 feet,

thence N 74° 03' 13" E 552.20 feet to a point on the East line of said SW1/4SE1/4;

thence departing said county road right of way S 00° 27' 02" E 1177.46 feet to the Southeast Corner of said SW1/4SE1/4;

thence S 00° 44' 14" E 1311.98 feet to the Southeast Comer of said NW1/4NE1/4;

thence S 89° 13' 38" W 350.09 feet along the South line of said NW1/4NE1/4 to the easterly line of that tract of land described in Book 576 at Page 949;

thence along said easterly line on the following courses N 50° 00' 46" W 79.31 feet;

thence N 56° 18' 23" W 95.68 feet;

thence N 66° 29' 05" W 97.33 feet;

thence N 26° 04' 22" W 523.81 feet;

thence N14° 20' 20" E 3.56 feet;
thence S 89° 30' 00" W 286.47 feet;
thence N 11°30'00" W 1150.00 feet;
thence N 49°30'00" W 395.00 feet;
thence S 70° 45' 00" W 870.00 feet;
thence S 29° 00' 00" W 414.95 feet to a point on the west line of said SE1/4SW1/4;
thence along said west line N 00° 14' 42" W 523.03 feet;
to the Point of Beginning having an area of 67.551 Acres.

EXHIBIT E – DISPUTE RESOLUTION POLICY

This Dispute Resolution Policy is appended to and made a part of the Declaration for the RAPIDS ON THE COLORADO SUBDIVISION, a Planned Community.

1. Except as provided in Section 6 that recognizes the Association has right to bring enforcement and compliance actions, any controversy, claim or dispute arising out of or relating to the following matters are subject to required alternative dispute resolution procedures, if the dispute is not resolved by mutual agreement of the parties:
 - a. the creation and establishment of the Subdivision and the creation of Lots; and/or
 - b. the interpretation, application or enforcement of the Declaration; including the rights, obligations and duties of any Person subject to the provisions of the Declaration; and/or
 - c. the design or construction of the improvements within the Subdivision (including any Common Facilities) and/or any alleged defect therein; and/or
 - d. injury to Owner's person, any other bodily injury, property damage or loss of use relating to Owner's use or ownership of a Unit.
2. The items described in subsection 1. a – d. are referred to as "**Claim(s)**," and if not resolved by negotiation, shall be subject to and resolved by submitting the Claim to a mutually acceptable mediation process and, if not resolved during mediation shall be settled by mandatory binding arbitration, all in accordance with the applicable provisions of the of this Declaration, and not in a court of law. The right to engage in binding arbitration contained herein shall be interpreted broadly, and not in a limited fashion. The ability to participate in binding arbitration shall not be changed, altered or amended without the express written consent of the Declarant for as long as any Claim validly may be brought that would include the interests of the Declarant. If for any reason a Claim or any other dispute related to the Declaration or the construction of the Subdivision is not resolved through binding arbitration, but instead a legal action is brought in a court of law, the parties to the Claim or dispute hereby irrevocably waive any right they may have to a trial by jury.
3. **Communication.** Prior to commencement of any legal action, the party seeking resolution of a dispute shall first give a written notice to the other involved parties, setting forth with reasonable particularity the nature of the Claim and suggested alternatives for resolution (a "**Dispute Notice**"). Any settlement resolution proposed in a Dispute Notice shall be considered in good faith, and shall not be admissible in any arbitration or litigation proceedings ensuing to prove liability for or invalidity of any claim or its amount, nor shall statements made in compromise negotiations be admissible.
4. **Mediation.** If the Claim cannot be resolved through direct communication and negotiation, the parties shall attempt in good faith to resolve the Claim by mediation through a mediator

mutually acceptable to the parties before resorting to arbitration or litigation. The mediation may be conducted in accordance with the American Arbitration Association ("AAA") Mediation Procedures, or such other procedures or methodology mutually agreed to by the parties to the dispute. The parties may engage any qualified mediator mutually agreed to by the parties including (i) use the services of a dispute resolution service provider such as the Judicial Arbiter Group Colorado ("JAG"), (ii) use of the resources offered through the Colorado Judicial Branch, Office of Dispute Resolution, or (iii) any similar dispute resolution service provider located in the Glenwood Springs area. The cost of the mediation shall be divided equally among the parties.

5. Arbitration.

- a. Method. Any Claim contained in a Dispute Notice that cannot be resolved through negotiation or mediation shall, subject to the limitation contained in subsection i and the agreement of the affected parties, be finally settled by arbitration as provided herein. Claims involving the Declarant shall be resolved by binding arbitration unless the Declarant agrees in writing to an alternate resolution process, and this provision may not be amended by the Association without the express written consent of the Declarant. If arbitration is the required resolution process, the unresolved Claim shall be submitted to arbitration to be administered by a properly credentialed and mutually agreed upon arbitrator or arbitration service (i) such as the Judicial Arbiter Group of Denver, Colorado - ("JAG"), (ii) resources offered through the Colorado Judicial Branch, Office of Dispute Resolution, or (iii) any similar dispute resolution service provider located in the Garfield County/Glenwood Springs area. The arbitrator(s) shall have knowledge and experience regarding the subject in dispute. The initiating party shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the Claim, the amount involved and the remedy sought, and shall be responsible for all filing requirements and the payment of any fees according to the rules of the designated arbitration service, or according to the rules and standards of the mutually agreed upon arbitrator(s).
- b. Process. The parties shall have a fair opportunity to present their respective positions to the arbitrator(s), orally or in writing, as the arbitrator(s) may specify depending on the nature of the Claim. The arbitrator(s) may permit such testimony, materials and documentation as they may determine to be appropriate. The arbitrator(s) shall be bound by and shall resolve any Claim strictly in accordance with the substantive law of the State of Colorado. The arbitrator(s) shall provide a written statement of the resolution within thirty (30) days after the conclusion of the presentations of the parties and receipt of requested materials and documents. The arbitrator's statement shall be in the form determined appropriate by the arbitrator(s) and may include findings of fact and legal authorities, or in the discretion of the arbitrator(s), contain only the final award.
- c. Binding Nature; Applicable Law. The consideration of the parties to be bound by arbitration shall include a waiver of access to determination by a court or jury. The

decision of the arbitrator(s) shall be final, nonappealable and binding upon the parties, and it may be entered as a judgment in any court of competent jurisdiction; provided that any party to the arbitration proceeding may seek a court order vacating the decision of the arbitrator in accordance with the provisions of and on the grounds set forth in Section 13-22-214, C.R.S. or a modification or correction of the arbitrator's award in accordance with the provisions of Section 13-22-211 or 13-22-215, C.R.S., and may take an appeal from court orders related to the arbitration proceeding or award as provided in Section 13-22-221, C.R.S., as such statutes may be amended from time to time.

- d. Location. The alternative dispute resolution proceeding shall be held within Garfield County, Colorado, unless otherwise mutually agreed by the parties to the Claim.
6. Enforcement Exception. Notwithstanding any provision in this Section to the contrary, the Association shall have the right to enforce by judicial action or other available remedy all covenants set forth in all Governing Documents as more particularly provided in this Declaration and the Act, including without limitation, an action at law to collect any assessments not paid when due, and does not agree to mediate or arbitrate its claims in such enforcement or collection actions except as provided in the Dispute Resolution Policy.
7. Construction Defect Claims. Any Claim that arises out of or is related to the construction within the Common Elements or for any Common Facility, including without limitation any claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction be subject to these dispute resolution proceedings.
8. Approval for Legal Action. Except as provided in subsection g, neither the Association nor the Executive Board may commence any action whether through arbitration or the courts seeking equitable relief, or seeking either an unspecified amount of damages or damages in excess of \$10,000.00, unless the following conditions are satisfied:
- a. The decision to commence such action or proceeding shall be taken at an annual or special meeting of the Association;
 - b. A budget for such litigation or arbitration, 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 affected Owners and posted at the principal office of the Association at least thirty (30) days prior to such meeting; and
 - c. At such meeting the Owners representing an aggregate of two-thirds (2/3) or more of the voting interests of the Units then included within the Subdivision shall approve the decision to commence, and the proposed budget for, such action or proceeding, and shall concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the approved budget.

- d. The Association shall be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in this Section.
- e. All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with this Section 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 Owners, requiring the approval of the Owners in accordance with this Section, 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, but shall remain liable for costs and any fees under the prevailing party provisions hereof.
- g. The requirements set forth in Sections a. – e. above 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. If any Owner fails to timely pay assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding, which costs shall be assessed against the offending Owner as a Default Assessment.
- h. The requirements set forth in Sections a. – e. above shall not apply to any action or proceeding commenced against the Association by any third party or any Owner which the Association is required to defend; provided however, the budget for the defense of such action shall be established in accordance herewith and the costs of defense shall be assessed as set forth in Section e. The Board shall represent the Association in any such proceedings and shall keep the Owners informed of the proceedings as deemed appropriate by the Board, in consultation with legal counsel.
- i. **Costs and Attorney Fees.** The prevailing party in any arbitration or an action for judicial relief may seek reimbursement from the non-prevailing party or parties, for all collection costs and expenses, including reasonable attorneys' fees and costs in connection with such arbitration or action for judicial relief without the necessity of commencing a legal proceeding to the extent such costs and attorney fees may be appropriately awarded in accordance with Section 123 of the Act. The term "**Prevailing Party**" means the party whose position is most nearly upheld in the action. If any Owner fails to timely pay assessments or any money sums due to the Association the Association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the

necessity of commencing a legal proceeding in accordance with Section 123 of the Act.

9. **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 Board of Directors or its management arising as a result of the enforcement or lack of enforcement of this Declaration.