

**RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND**  
**EASEMENTS FOR ROARING FORK PRESERVE SUBDIVISION**

**ROARING FORK PRESERVE, LLC**, a Colorado limited liability company ("Declarant"), as owner of certain real property in the County of Garfield, State of Colorado, known as Roaring Fork Preserve Subdivision, as depicted on the Plat of same recorded on May 23, 2002, as Reception No. 603992 in the records of the Clerk and Recorder of Garfield County, Colorado ("the Plat"), and described in Exhibit A attached hereto and incorporated herein by this reference ("the Property"), desires to create a Common Interest Community, to be known as Roaring Fork Preserve Subdivision, in which certain common property will be owned by the Roaring Fork Preserve Homeowners Association, a Colorado non-profit corporation, its successors and assigns (the "Association"). Declarant makes the following declarations:

ARTICLE 1

**STATEMENT OF PURPOSE AND IMPOSITION OF COVENANTS**

1.1 Imposition of Covenants. Declarant hereby makes, declares, and establishes the following covenants, conditions, restrictions and easements ("Covenants") which shall affect all of the Property. From this day forward, the Property shall be held, sold and conveyed subject to these Covenants. These Covenants shall run with the land and shall be binding upon all persons or entities having any right, title or interest in all or any part of the Property, including Declarant, and their heirs, successors, assigns, tenants, guests and invitees. These Covenants shall inure to and are imposed for the benefit of all Lot Owners of parcels of land located within the Property. These Covenants create specific rights and privileges which shall be shared and enjoyed by all owners and occupants of any part of the Property. Declarant hereby submits Roaring Fork Preserve Subdivision to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et. seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

1.2 Declarant's Intent. Declarant wishes to ensure the attractiveness of individual Lots and Improvements to be made within the Property, to prevent any future impairment of the Property, and to preserve, protect and enhance the values and amenities of the Property as a highly desirable, scenic and exclusive residential area. It is the intent of Declarant to preserve the present beauty and views and to guard against the construction on the Property of Improvements built of improper or unsuitable materials or with improper quality or methods of construction. Declarant

intends to encourage the construction of attractive permanent Improvements of advanced technological, architectural and engineering design, appropriately located to preserve the harmonious development of the Property.

**A R T I C L E 2**  
**DEFINITIONS**

Each capitalized term not otherwise defined in this Declaration or on the Plat shall have the meanings specified or used in the Act. The following terms, as used in this Declaration, are defined as follows:

2.1 "Act" shall mean the Colorado Common Interest Ownership Act, as in effect from time to time including any amendments to or replacements thereof. Any reference to a particular section of the Act shall include any amendments to or replacements of such section. When this Declaration makes reference to defined terms appearing in the Act such terms shall, unless otherwise provided, have the same meaning as provided in the Act.

2.2 "Annual Assessments" shall mean the charges levied and assessed each year against a Lot.

2.3 "Articles" shall mean Articles of Incorporation and any amendments thereto for the Roaring Fork Preserve Homeowners Association, a Colorado nonprofit corporation.

2.4 "Assessments" shall mean Annual Assessments and Special Assess-ments.

2.5 "Assessment Lien" shall mean the statutory lien for payment of Assessments provided by the Act.

2.6 "Association" shall mean the Roaring Fork Preserve Homeowners Association, a Colorado nonprofit corporation, formed and incorporated to be and constitute the Association to which reference is made in this instrument to further the common interests of owners of all property within the Roaring Fork Preserve Subdivision.

2.7 "Board or Executive Board" shall mean the governing board of the Association.

2.8 "Bylaws" shall mean the bylaws adopted by the Association and any amendments thereto. In the event of any inconsistency or conflict between the Bylaws and the Declaration, the provisions of the Declaration shall control.

2.9 "Common Elements" shall mean the real property, other than Lots, within the Roaring Fork Preserve Subdivision owned, leased, or maintained by the Association, together with water rights and property rights owned by the Association.

2.10 "Common Expenses" shall mean estimated and actual expenditures made or to be made by or on behalf of the Association, together with any allocations to reserve or sinking funds.

2.11 "County" shall mean Garfield County, Colorado.

2.12 "Declarant" shall mean Roaring Fork Preserve, LLC, a Colorado limited liability company and any party designated as a successor or assign of the Declarant by a written instrument duly recorded in the real estate records of Garfield County, Colorado. Such instrument may specify the extent and portion of the rights or interests being assigned by Declarant.

2.13 "Declaration" shall mean this Restated Declaration of Covenants, Conditions, Restrictions and Easements for Roaring Fork Preserve Subdivision as recorded in the real estate records of Garfield County, Colorado, and as amended from time to time. Reference to this Declaration shall include the Plat, which is incorporated herein.

2.14 "Design Guidelines" shall mean the rules and regulations adopted by the Association in conformance with and pursuant to this Declaration to maintain the quality and architectural harmony of Improvements in Roaring Fork Preserve Subdivision.

2.15 "Improvements" shall mean all buildings, parking areas, fences, walls, hedges, plants, poles, antennae, driveways, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, roads, utility improvements, and removal of trees or plants. "Improvements" do include both original improvements and all later changes and improvements. "Improvements" do not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances.

2.16 "Lot" shall mean any lot shown on the Plat of Roaring Fork Preserve Subdivision which may be conveyed in conformance with the laws of the State of Colorado. For purposes of conforming the terms and provisions of this Declaration to the terms and conditions of the Act, the term "Lot" shall be analogous to the term "Unit" as that term is defined in the Act.

2.17 "Lot Owner" shall mean an owner of a Lot shown on the Plat of Roaring Fork Preserve Subdivision. For purposes of conforming the terms and provisions of

this Declaration to the terms and conditions of the Act, the term "Lot Owner" shall be analogous to the term "Unit Owner" as that term is defined in the Act.

2.18 "Mortgage" shall mean any mortgage, deed of trust or other security instrument creating a real property security interest in any Lot, excluding any statutory, tax or judicial liens.

2.19 "Mortgagee" shall mean any grantee or beneficiary of a Mortgage.

2.20 "Mortgagor" shall mean any grantor or trustor of a Mortgage.

2.21 "Plat" shall mean the Final Subdivision Plat for Roaring Fork Preserve Subdivision recorded May 23, 2002, as Reception No. 603992 of the real estate records of Garfield County, Colorado, and any amendments thereto as may be duly approved by the County and recorded in the real estate records of Garfield County. By this reference, the Plat is incorporated herein.

2.22 "Special Assessments" shall mean any special or extraordinary Assessment levied and assessed pursuant hereto.

2.23 "Roads" shall mean the roads shown on the Plat.

### **A R T I C L E 3**

#### **DESCRIPTION OF COMMON INTEREST COMIVIUNITY**

3.1 Maximum Number of Lots. The maximum number of Lots in Roaring Fork Preserve Subdivision is nine (9) single family Lots.

3.2 Common Elements. The Common Elements include:

A. All ditch and water rights appurtenant to or used upon or in connection with the Property, including 51.9% of a 1/4 interest in the Slough Ditch with the water and ditch rights appurtenant thereto.

B. All access, pedestrian, ditch and utility easements depicted on the Plat of Roaring Fork Preserve Subdivision and other easements depicted on said Plat or described below, all of which are designated by this Declaration for the common use and enjoyment of Lot Owners and their families, tenants, guests and invitees, and emergency service providers, but not for the public. The Association, subject to the rights and obligations of the Lot Owners set forth in this Declaration, shall be responsible for the management and control of the Common Elements.

C. All domestic water wells, permits, appurtenant equipment and common water storage tanks for fire protection purposes.

3.3 Allocated Interests. The undivided interest in the Common Elements, the Common Expense liability, and votes in the Association allocated to each Lot Owner shall be allocated to each Lot and calculated as follows:

A. the undivided interest in Common Elements, on the basis of an equal interest for each Lot;

B. the percentage of liability for Common Expenses, on the basis of equal liability for each Lot; and

C. the number of votes in the Association, on the basis of one vote per Lot.

3.4 Conveyance of Water Rights. Prior to the sale of any lots, Declarant shall transfer to the Association by quit claim deed all water and water rights appurtenant to the Property described in Section 3.2 above. Such water and water rights shall be held by the Association in trust for the use and benefit of the Lot Owners and shall not be sold, leased, conveyed or encumbered by the Association.

3.5 Irrigation Water Rights. The Declarant obtained by quit claim deed 51.9% of a one-quarter (Y4) interest in and to those certain water rights decreed to the Slough Ditch and Banning Lateral decreed in Garfield County, Colorado. This water right shall be conveyed by quit claim deed from Declarant to the Association immediately following the recordation hereof. The Association shall pay all ditch assessments and shall be responsible to operate, repair and maintain said ditch for the benefit of itself and the Lot Owners. The Association shall use said irrigation right for the irrigation of the open space depicted as "irrigation easement" on the plat at the entry into the subdivision and shall coordinate the use of said rights for the irrigation of individual Lots in an amount as may be designated by the Association on a year to year basis. Each Lot Owner will observe the following:

A. Each Lot Owner shall adhere to the terms of any water rights decrees and permits affecting water service on and to the Property and other water rights arising on or carried through the Property, including carriage rights of other owners of interest in the Slough Ditch;

B. Without limiting the foregoing, the utilization of irrigation water from the Slough Ditch shall be coordinated with the other owners of interests in such water rights which include access easements for pipelines and along ditch rights of way for repair, cleaning and maintenance;

C. The irrigation system shall be regulated and operated at all times in a manner so as to balance the use of the irrigation water by all persons entitled to the benefit of such water;

D. Any capital improvements or modifications required to the irrigation system due to any change to residential use made on Lots 1 through 9 shall be paid exclusively by the Association if for the benefit of all such Lots, and if less than all such Lots will be benefitted, then proportionately by the Lot Owners making such capital improvements or modifications. In no event shall the remaining owners of interests in the irrigation system be charged for such capital improvements or modifications;

E. Each Lot Owner shall own and be responsible for all costs, expenses and liabilities for ditch laterals which run from such Lot Owner's point of connection and connect to the Association's distribution ditches and any other costs associated with use of irrigation water on the Owner's Lot;

F. The Association may establish charges for water usage based on consumption such that the irrigation system will be independently supported with adequate reserves for capital replacements;

G. The Association, upon reasonable notice, through its agents, shall have full and free access at all reasonable hours to read meters, examine water facilities, determine water usage and take other necessary actions to assure compliance with the rules of the Association, provided that in the event of emergency, based on a good faith determination by the Association, reasonable notice shall not be required, if impractical;

H. The Association shall have the right upon reasonable notice, to shut off or curtail diversions of irrigation water for violation of these Covenants or any Association rules.

3.6 Easements. Easements for all existing irrigation ditches over and across the Property shall be recognized and maintained as shown on the final Plat. In addition, the Association shall have the ability to construct lateral ditches over and across the irrigation easements, roads and any Lot to effectively convey water to each individual Lot for irrigation and/or for filling a pond on the individual Lots. All Lots shall be subject to the right of the Association to so construct, operate, maintain, repair and replace lateral ditches. Such lateral ditches may be located by the Association for the benefit of one or more of the Lots anywhere on each of the Lots so long as said location does not unreasonably interfere with existing Improvements (not including landscaping) or the placement of Improvements in the building envelope for the Lots. All Lot Owners shall own their Lots subject to the right of the

Association's ability to construct, operate, maintain and repair lateral ditches to convey Slough Ditch water across their Lots. All ditch easements shall be of a width of forty (40) feet, twenty (20) feet either side of centerline unless otherwise specified. The irrigation easement depicted on the Plat at the entry into the property from County Road 100 shall include the right of the Association to construct and maintain entry features, including signage, ponds, fencing and landscaping.

3.7 Pond. Each Lot Owner may file for and obtain water rights and an augmentation plan for a pond to be located on his Lot. Such pond may be filled with the Slough Ditch and Banning Lateral and/or groundwater, at the Lot Owner's sole discretion and cost. In the event that the pond is to be filled with the Slough Ditch, the Lot Owner shall be subject to all other senior water rights in said ditch and shall be entitled to use said structure only in the event that there is existing excess capacity in the ditch at any time without enlargement of the ditch structure. Such pond and water right shall be owned by the individual Lot Owner and that Lot Owner shall be solely responsible for the operation, maintenance, repair and replacement of said pond at the Lot Owner's sole expense. The construction, installation and use of said pond shall not interfere with any other Lot or other property of the Association. The construction, installation and use of said pond shall not interfere with any other Lot or the common open space or other property of the Association. No Lot Owner shall be allowed to interfere with or change the natural or then existing water drainage channels or the flow of water or groundwater as it exists or enters any other person's property, without the consent of the Association, which consent shall not be unreasonably withheld. Before construction, such Lot Owner shall obtain an engineering analysis certified by a registered professional engineer which addresses satisfactorily all possible effects of building the pond and storing water as to any other Lot owner. Such report shall be provided to the Association for its review before construction may occur. The Association shall have sixty (60) days to review and provide comment and suggestions to the Lot Owner. The pond shall be constructed to allow water to circulate or continuously flow through to prevent water stagnation. Additionally, the pond shall be filled from time to time in order to maintain the water level and thus the aesthetic quality of the pond as to other Lot Owners.

3.8 Road Access. The roads depicted on the Plat for access to Roaring Fork Preserve Subdivision to be known as Ponderosa Pines Way, Weeping Willows Lane, and Silver Spruce Drive shall be dedicated to the public by Declarant. The Association shall be responsible for the operation and maintenance of said roads in conjunction with other users as set forth in a road maintenance agreement. The Association shall not be responsible for maintenance of private drives located on any Lot. The Executive Board shall cooperate with the applicable traffic and fire control officials, and shall post the road with required traffic control, fire lane, and parking regulation signs. Association costs of the operation and maintenance of the roads

shall be borne equally by the Lot Owners of Lots 1 through 9 regardless of the length of road serving a particular Lot.

3.9 Recorded Easements. The Property, and all portions thereof, shall be subject to all easements shown on the recorded Plat affecting the Property, or any portion thereof, and to any other easements of record as of the . date of the recordation of this Declaration.

3.10 Utility Easements. Declarant reserves to Declarant and hereby grants to the Association a general non-exclusive easement upon, across, over, in and under the easements as shown and depicted on the Plat for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to, domestic and irrigation water, sewer, gas, telephone, television and electrical systems. By virtue of this Easement, it shall be expressly permissible and proper for the companies providing electrical, telephone and other communication services to install and maintain necessary electrical, communications and telephone wires, circuits, and conduits in the easement. All water, sewer, gas, telephone, electrical, or communications lines, systems, or facilities shall be installed or relocated below the surface of any Property, except for necessary surface facilities. Such utilities may be installed temporarily above ground during construction, if approved by the Declarant or the Association. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Lot Owners, the Association and Declarant; shall prosecute its installation and maintenance activities as promptly and expeditiously as possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given, the right and authority to grant such easement upon, across, over or under any part of or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish or modify any other recorded Easement on the Property. All service connections to primary utility lines (including water curb stops, gas shutoff valves, electrical transformers and telephone pedestals) serving each Lot shall be the responsibility of the Lot Owner.

3.11 Emergency Access Easement. A general easement is hereby granted to all law enforcement, fire protection, ambulance and all other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

3.12 Maintenance Easement. An easement is hereby reserved to Declarant, and granted to the Association, its officers, agents and employees, successors and assigns, upon, across, over, in and under the Property and a right to make such use



of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform, including without limitation, any actions in respect to the irrigation distribution system and individual sewage treatment systems (ISTS).

3.13 Drainage Easement. An easement is hereby reserved to Declarant and granted to the Association, its officers, agents, employees, successors and assigns, to enter upon, across, over, in and under any portion of the Property for the purpose of changing, correcting or otherwise modifying any existing drainage channels on the Property to protect the historic drainage pattern of water. The change, correction, or modification shall not unreasonably interfere with existing Improvements (not including landscaping) or the placement of Improvements in the building envelope for the Lots. Reasonable efforts shall be made to use this easement so as not to disturb the uses of the Lot Owners, the Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; to avoid interference with existing structures; and to restore any areas affected by such work to the condition existing before the work as soon as possible following such work. Declarant and Declarant's agents, employees, successors and assigns must inform and obtain the written approval of the Executive Board and any affected property owner. Such approvals shall be obtained prior to undertaking such drainage work, which approvals shall not be unreasonably withheld.

3.14 Pedestrian Easement. A pedestrian easement for the sole benefit of members of the Association which provides access to the Roaring Fork River has been dedicated on the subdivision Plat. This easement allows for access to the Roaring Fork River adjacent to lands within the subdivision. Unless otherwise prohibited by law, a fisherman who has legal access to the river may wade within the river channel. However, fishing from the river bank on any property requires permission of that property owner. This easement may be used by pedestrians only, and use by motor vehicles or horses is prohibited.

3.15 Easements Deemed Created. All conveyances of any part of the Property made after the date of this Declaration, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 3 even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

**ARTICLE 4**  
**THE ASSOCIATION**

4.1 Formation of Association. The Association shall be a nonprofit Colorado corporation charged with the duties and invested with the powers prescribed by law and as set forth in its Articles, Bylaws, this Declaration and the Act. The Association shall be a master association acting in the capacity of an association described in Section 38-33.3-301 of the Act and may exercise all of the powers described in Section 38-33.3-302. 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.

4.2 Membership. Every person, by virtue of being a Lot Owner and while such person is a Lot Owner, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Lot Owner, whether one or more persons, shall have more than one membership per Lot owned, but all of the persons owning each Lot shall be entitled to rights of membership and use and enjoyment appurtenant to such ownership. The Association shall be a membership association without certificates or shares of stock. The membership of the Association shall at all times consist exclusively of all Lot Owners. Membership in the Association shall automatically terminate when a Lot Owner ceases to be an owner of a Lot.

4.3 Authority. The business affairs of Roaring Fork Preserve Subdivision shall be managed by the Executive Board of the Association, and such officers as the Executive Board may elect or appoint in accordance with the Articles and Bylaws as the same may be amended from time to time. The Association by and through the Executive Board shall govern and manage all Property conveyed or leased by Declarant, other than the individual Lots, the Common Elements and any other Association property and shall enforce the provisions of this Declaration.

4.4 Powers. The Association shall have all of the powers and authority permitted under the Act necessary and proper to manage the business and affairs of Roaring Fork Preserve Subdivision. Such powers shall include, without limitation, levying Assessments against Lot Owners, imposing a lien on Lots for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens, enforcing any deed restrictions and covenants, acquiring, holding, owning, leasing, mortgaging and disposing of property, the adoption of rules and regulations, the defending, prosecuting or intervention in litigation on behalf of all members, the borrowing of monies for Association purposes and the right to pledge future income in order to secure such borrowings. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the

lender as security for repayment thereof. The Association shall also have the power to enforce all provisions of this Declaration, including without limitation, Articles 8:10 and 8.11 hereof. The Association may exercise any other right, power or privilege given to it expressly by this Declaration, the Articles and Bylaws, or by the Act, and every other right, power or privilege reasonably to be implied from the existence of any right, power or privilege given to it herein or reasonably necessary to effectuate any such right, power or privilege.

4.5 Declarant Control. The Declarant shall have all the powers reserved in Section 38-33.3-303(5) of the Act to appoint and remove officers and members of the Executive Board as defined in the Articles and Bylaws until the conveyance by the Declarant of six (6) of the nine (9) Lots, anything in the Act to the contrary notwithstanding. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the foregoing period of Declarant control, but in that event, the Declarant may require for the duration of the period of Declarant control that any action specified in the document by which Declarant voluntarily surrenders such rights be approved by the Declarant prior to any such action becoming effective.

4.6 Association Rules. The Association may from time to time adopt, amend and repeal rules and regulations to be known as the "Roaring Fork Preserve Homeowners Association Rules" by a majority vote of the Executive Board. The purpose of the Association Rules shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration. Rules shall not be inconsistent with this Declaration.

4.7 Limited Liability. A. Except as otherwise provided in the Act or this Declaration for Executive Board members and officers appointed by the Declarant, neither the Association nor its past, present or future, officers, directors, nor any other employee, agent or committee member of the Association shall be liable to any Lot Owner or to any other person for actions taken or omissions made except for wanton and willful acts or omissions. Without limit to the foregoing, the Association and the Executive 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. 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 Lot Owners severally agree to indemnify the Association or Executive Board against loss resulting from such action or failure to act, provided that the Association and the Executive Board acted or failed to act in good faith and without malice. Any Executive Board member or officer of the Association appointed by the Declarant as

provided for herein shall exercise in the performance of their duties the standard of care required of fiduciaries of the Lot Owners.

4.8 Association Records. The Association shall maintain financial records sufficient to enable the Association to carry out its responsibilities under this Declaration and to comply with the requirements of the Act. All financial and other records shall be made reasonably available for examination by any Lot Owner and such Lot Owner's authorized agents.

4.9 Association Contracts. To the extent the Executive Board so elects, the Association may enter into or accept the assignment of contracts to provide functions or services for the benefit of or relating to the Roaring Fork Preserve Subdivision. Such contractual obligations may be provided by the Association's employees or an independent contractor retained by the Association. To the extent provided in any such contract, the Executive Board shall charge and collect any fees or reimbursements provided by such contracts.

4.10 Other Association Functions. The Association may undertake, to the extent the Executive Board in its sole discretion so elects, to provide functions or services for the benefit of all, or some, Lot Owners on such basis as the Executive Board may reasonably determine. Such functions or other services may be provided by the Association's employees or an independent contractor retained by the Association.

4.11 Notice to Maintain. A Lot Owner shall immediately report to the Association, in writing, the need for any maintenance, repair or replacement which is the Association's responsibility to provide. In the event of any disagreement as to the need for or the responsibility of the Association to provide the said maintenance, repair or replacement, the good faith decision of the Executive Board shall be final.

4.12 Mechanics' Liens. Declarant shall be responsible for the release of all mechanics' liens filed with respect to the Association property, or any part thereof, if any such liens arise or are alleged to arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Except as the result of labor performed or materials furnished at the instance of the Executive Board, no labor performed or materials furnished with respect to Association property or Lots shall be the basis for filing a lien against any Association property. No labor performed or materials furnished at the instance of the Executive Board shall be the basis for filing a lien against any Lot.

4.13 Certain Provisions Regarding Association Property. Property Conveyed or Leased by Declarant and any other Association property, including but not limited to, Common Elements, the Roads, pedestrian and utility easements shall, at all times,

be owned, operated, maintained and exercised by the Association consistent with the provisions of this Declaration, the Plat and the Act and in trust for the use, benefit and enjoyment of Lot Owners entitled to such use, benefit and enjoyment and their family members, guests and invitees. The Association may not convey or subject to a security interest any real property owned or leased by the Association without the prior written consent of sixty-six and two-thirds percent (66<sup>2</sup>/3%) of all Lot Owners and with regard to any such conveyance or security interest shall otherwise comply with the provisions of the Act.

4.14 Voting. Except as otherwise provided in this Section 4, a Lot Owner shall have one (1) vote allocated of each Lot owned and the affirmative vote of a majority of the total of all Lot Owners constituting a quorum in person or by proxy and entitled to vote on any matter shall constitute approval of such matter unless a different number is required on a particular matter by the Act, this Declaration, the Articles or the Bylaws. Where there is more than one Owner of a Lot, the several record Owners of such Lot shall be required to designate, by prior written notice to the Association, the particular Lot Owner who shall cast the votes appurtenant to that Lot. If the several Owners of any Lot are unable or unwilling to designate a particular Lot Owner to vote, then the membership appurtenant to that Lot, shall not be entitled to vote on any Association affairs until such designation is made.

4.15 Quorum. A quorum is deemed present throughout any meeting of the Association if members entitled to cast (or proxies entitled to cast) fifty percent (50%) of the votes of the Association are present at the beginning of the meeting. If, however, such quorum is not present or represented at the meeting, the members entitled to vote at the meeting will have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented by proxy.

## **A R T I C L E 5**

### **COVENANTS FOR COMMON EXPENSE ASSESSMENTS**

5.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments and Special Expense Assessments. Declarant, for each Lot, hereby covenants, and each Lot Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, are deemed to covenant and agree to pay to the Association annual Common Expense Assessments and Special Expense Assessments. Such Assessments, including fees, charges, late charges, attorney's fees, fines and interest charged by the Association shall be the personal obligation of the Lot Owner at the time when the Assessment or other charges became or fell due. Two or more Lot Owners of a Lot shall be jointly and severally liable for such obligations. The personal obligation to pay any past due sums to the Association shall not pass to a successor in title unless expressly assumed by them.

The Common Expense Assessments and Special Expense Assessments of the Association shall be a continuing lien upon the Lot against which each such Assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (a) liens and encumbrances recorded before the recordation of the Declaration; (b) a first lien Security Interest on the Lot recorded before the date on which the Common Expense Assessment or Special Expense Assessment sought to be enforced became delinquent; and (c) liens for real estate taxes and other governmental Assessments or charges against the Lot. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the Association's lien except that sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the Act. No such sale, transfer, foreclosure, nor cancellation or forfeiture shall relieve any Lot Owner from continuing liability for any Common Expense Assessments or Special Expense Assessments thereafter becoming due, nor from the lien thereof.

5.2 Apportionment of Common Expenses. Common Expenses shall be allocated and assessed against Lots on an equal share for each Lot.

5.3 Purpose of Assessments. Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of Roaring Fork Preserve Subdivision and for the improvement and maintenance of the Common Elements, including, but not limited to: taxes and insurance on the Common Elements, reserve accounts, the cost of labor, equipment, materials, management and supervision, the salary or fee of any manager, utilities, transportation, professional fees and other customary charges.

5.4 Annual Assessment/Commencement of Common Expense Assessments. Common Expense Assessments shall be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. Common Expense Assessments shall be payable in monthly installments and shall begin on the first day of the month in which conveyance of the first Lot to a Lot Owner other than the Declarant occurs.

5.5 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate as determined by the Executive Board. A late charge of up to five percent (5%) of each past due installment may also be assessed thereon. Further, the Association may bring an action at law or in equity, or both, against any Lot Owner

personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Lot Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien. The delinquent member shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment. The Executive Board may also record a Notice of Delinquent Assessment or charge against any Lot as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Executive Board, set forth the amount of the unpaid Assessment, the name of the delinquent Lot Owner and a description of the Lot. The Assessment Lien may be foreclosed by the Association in the same manner as a Mortgage on real property. The Association shall be entitled to purchase the Lot at foreclosure. The Executive Board may establish a fixed fee to reimburse the Association for the Association's cost in preparing and recording such notice, processing the delinquency and recording a release of said lien, which fixed fee shall be treated as part of the delinquent Assessment secured by the Assessment Lien. The Association may bring an action at law against the Lot Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Lot. No Lot Owner may waive or otherwise avoid liability for the Assessments provided for herein by non-use of the benefits derived from Assessments or abandonment of his Lot. No delinquent member shall be entitled to vote on any Association matters until the Assessment due, with interest and all other costs, shall be paid in full. Where Assessments due from any member are more than six (6) months delinquent, the Association may temporarily cut off any or all Association services or benefits, until all delinquent Assessments are fully paid.

5.6 Working Fund. The Association or Declarant shall require the first Lot Owner of each Lot (other than Declarant) to make a non-refundable payment in the minimum amount of \$2,500.00 per Lot to the Association, which sum shall be held, without interest, by the Association as a "working fund." The working fund shall be collected and transferred to the Association at the time of closing of each sale by Declarant of each Lot and shall be maintained for the use and benefit of the Association. Such payment shall not relieve a Lot Owner from making regular payments of the Assessments when due. Upon the transfer of a Lot, a Lot Owner of same shall be entitled to a credit from the transferee for any unused portion of the working fund.

5.7 Special Expense Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any Assessment period, a Special Expense Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for

other extraordinary expenses, provided that such Special Expense Assessment shall not exceed Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00) (except in the event of an emergency where there shall be no such limit). Special Expense Assessments shall be allocated as provided herein. For purposes of this section, the term "emergency" shall mean any circumstances or set of circumstances which poses an imminent threat of loss or damage, actual or threatened, to persons or property. Nothing contained herein shall allow the Declarant or the Association the ability to levy a Special Assessment for the construction of any capital improvement which the Declarant is required or committed to construct for the Property.

## **A R T I C L E 6**

### **DESIGN REVIEW**

6.1 Design Guidelines. The Association shall adopt, establish and publish from time to time Design Guidelines. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for Roaring Fork Preserve Subdivision. The Design Guidelines shall include the requirement that all residential dwellings shall include individual fire protection sprinklers, pursuant to NFPA Standard 13D, National Fire Protection Association, as the same may be amended from time to time. The Association may also establish reasonable criteria, including, without limitation, requirements relating to design, scale and color, as the Association may deem appropriate in the interest of preserving the aesthetic standards of Roaring Fork Preserve Subdivision. The Design Guidelines may be modified or amended from time to time by the Association. Compliance with the Association's Design Review process shall not be a substitute for compliance with applicable governmental building, zoning and subdivision regulations. Each Lot Owner shall be responsible for obtaining all approvals, licenses and permits as may be required before commencing construction.

6.2 Design Review. The Association shall review, study and either approve or reject proposed Improvements in Roaring Fork Preserve Subdivision in compliance with this Declaration and the Design Guidelines. In any Design Review, the Association shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location of Improvements, height, grade and finished ground elevation and all aesthetic considerations set forth in this Declaration and in the Design Guidelines. The Association's exercise of discretion in approval or disapproval of plans, or with respect to any other matter before it, shall be conclusive and binding on all parties.

6.3 Design Review Procedures. The President or other executive officer of the Association shall preside over all meetings for Design Review and shall provide for reasonable notice to each member of the Association before any such meeting.



The notice shall set forth the time and place of the meeting, and notice may be waived by any member. The affirmative vote of the majority of the members of the Association constituting a quorum either in person or by proxy shall govern its actions and be the act of the Association. A quorum shall consist of a majority of the members. Any applicant member seeking a Design Review nevertheless shall be entitled to vote on any action or decision. The Association may avail itself of technical and professional advice and consultants as it deems appropriate. The Association shall make such rules as it may deem appropriate to govern such proceedings.

6.4 Preliminary Approval. Lot Owners or other entities who anticipate constructing Improvements on Lots shall be provided with the Design Guidelines and shall submit preliminary sketches with a site plan of such Improvements to the Association for informal and preliminary approval or disapproval. All preliminary site and architectural sketches shall be submitted in at least four (4) sets, and shall contain sufficient general information on those matters required to be in the complete architectural and site development plans and specifications to allow the Association to act intelligently in giving an informed preliminary approval or disapproval. Persons contemplating the purchase of any Lot may submit preliminary sketches with site plans for purposes of obtaining an informal approval hereunder. The Association shall not be committed or bound by any preliminary or informal approval or disapproval.

6.5 Final Approval. At least four (4) complete sets of the architectural and site development plans and specifications shall be submitted to the Association along with a complete list of all materials and colors to be used. All copies of the complete plans and specifications shall be signed for identification by the Lot Owner or his architect. The Association shall have the right to request whatever additional specific information, plans, specifications, reports and the like it deems necessary to evaluate the development proposal throughout the approval and construction process. The Association shall certify to the Lot Owner, in writing, when the submittal is complete. In the event the Association fails to take any action within sixty (60) days after four (4) 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 Association as complete, all of such submitted architectural plans shall be deemed to be approved. The Association shall not unreasonably disapprove architectural plans. The Association shall disapprove any architectural and site development plans submitted to it which do not contain sufficient information for it to exercise the judgment required of it by these covenants.

6.6 Building Permit. A Lot Owner of a Lot may apply for a building permit from the County at any time; provided, however, the Lot Owner shall have first received final approval of plans pursuant to the Design Guidelines and the plans

submitted to the County shall not differ in any way from the plans approved by the Association. If the plans submitted to the County differ in any way from the plans approved by the Association, all approvals of the Association shall be deemed automatically revoked.

6.7 Variances. Subject to any restrictions contained in the governmental resolutions approving the Roaring Fork Preserve Subdivision or any other applicable covenants or restrictions, the Association may, by an affirmative vote of sixty six and two-thirds (66-2/3%) of the members of the Association constituting a quorum either in person or by proxy at a meeting of the Association, allow variances as to any of the architectural controls contained in this Declaration and/or policies or rules promulgated by the Association, or contained in the Design Guidelines, on such terms and conditions as it shall require. Further, any matter requiring a variance from County land use, building or zoning regulations shall also require an approval from the Association.

6.8 General Standards. The Association shall evaluate, among other things: (i) the materials to be used on the outside of buildings or structures, (ii) exterior colors, (iii) harmony of architectural design with other structures within the Roaring Fork Preserve Subdivision, (iv) height and other design features, (v) location with respect to topography and finished grade elevations, (vi) harmony of landscaping with the natural setting and native vegetation, and (vii) consistency with the Design Guidelines.

6.9 Rules and Regulations. The Association may promulgate and adopt rules and regulations necessary to implement these covenants. These rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications and the like which need to be submitted with any application or site specific limitations. By way of illustration only and without requirement to do so, the Association rules and regulations may address and the Association shall have the power and authority to regulate any or all of the following: application procedures and processing fees; charges by any outside professionals or other costs incident to evaluating any application, bonds in the form of cash deposit, letter of credit or otherwise regarding damage to Roads or other subdivision infrastructure and for revegetation and restoration of lands; color and materials, including, but not limited to, roofs, chimneys, siding, masonry and glazing; setbacks, height limitations, building profiles and driveway locations; construction staging, construction hours which may be controlled during certain times of the year, storage for construction materials, location of temporary construction facilities such as trailers, dumpsters and toilets; routing of utility extensions; drainage, grading and erosion control; landscape and vegetation, fencing, lighting, signage, and trails; concerns or objectives regarding maintenance of agricultural lands and preservation of wildlife; and privacy and visual characteristics. Such rules and regulations shall

be adopted, amended or replaced by affirmative vote of a majority of the members of the Association constituting a quorum either in person or by proxy at a meeting of the Association.

6.10 Written Records. The Association shall keep and safeguard complete and permanent written records of all approved applications, including one set of the finally 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.

6.11 Inspection and Compliance. The Association shall have no duty or obligation to make inspections of any construction; however, nothing herein shall prevent the Association from making inspections prior to or after completion. Upon the completion of any work for which approved plans and specifications are required, the Lot Owner shall give written notice of completion to the Association. Within thirty (30) days after receipt of such notice, the Association may inspect the work to determine its compliance with the approved plans. If the Association finds that the work was not done in substantial compliance with the approved plans or any construction or change in natural conditions on any Lot was undertaken without first obtaining approval from Association, written notice shall be sent by the Executive Board to such Lot Owner specifying the noncompliance and requiring the Lot Owner to cure such noncompliance within thirty (30) days or any extension thereof granted. If the Lot Owner fails to cure the noncompliance or to enter into an agreement to cure on a basis satisfactory to the Association within said thirty (30) day period or any extension thereof as may be granted, the Executive Board may, at its option, cause the noncomplying improvement to be removed or the noncompliance to be cured. The Lot Owner shall be assessed the costs and expenses incurred by the Association in taking corrective action, plus all costs incurred, including reasonable attorneys' fees and costs as a Special Assessment which, without waiver of any other right or remedy, may be collected as an Assessment Lien. The Lot Owner shall be personally liable for all such costs and expenses.

6.12 Design Review Expenses. The Association shall have the right to charge a reasonable fee for each application submitted to it for Design Review, in an amount which may be established by the Association from time to time, and recover the reasonable costs and expenses of any technical and professional advice required to properly consider the application and to generally defray the expenses of the Association for this purpose.

6.13 Limitation of Liability. The Association shall use reasonable judgment in accepting or rejecting plans and specifications submitted to it for Design Review. Neither the Association, Declarant, nor any officer, Executive Board member or individual Association member, shall be liable to any person for any act of the

Association concerning submitted plans and specifications, except for wanton and willful acts. Approval by the Association does not necessarily assure approval by any governmental authority having jurisdiction. Notwithstanding Association approval of plans and specifications, neither the Association nor any of its members shall be responsible or liable to any Lot Owner, developer or contractor with respect to any loss, liability, claim or expenses which may arise because of approval of the construction of the Improvements. Neither the Executive Board, the Association, nor Declarant, nor any of their employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Declaration, nor for any structural or other defects in any work done according to such plans and specifications.

**A R T I C L E    7**  
**CONSTRUCTION AND ALTERATION OF IMPROVEMENTS**

7.1 General. The Design Guidelines and the provisions set forth in these Covenants shall govern the right of a Lot Owner to construct, reconstruct, refinish, alter or maintain any Improvement upon, under or above any of Roaring Fork Preserve Subdivision, and to make or create any excavation or fill on Roaring Fork Preserve Subdivision, or make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on or over Roaring Fork Preserve Subdivision.

7.2 Approval Required. No Improvement in Roaring Fork Preserve Subdivision shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for such Improvement shall have been approved by the Association; provided, however, that Improvements and alterations which are completely within a structure may be undertaken without such approval.

7.3 Specific Requirements for Buildings. Subject to governmental regulations, no buildings shall be placed, erected, altered or permitted to remain on any Lot other than one (1) building containing a single family dwelling, one (1) attached or detached garage, and one (1) other non-residential outbuilding other than a garage not exceeding one thousand five hundred (1,500) square feet. The use of all buildings must be uses by right or conditional or special uses approved pursuant to the zoning regulations of the County. All buildings shall be located wholly within the building envelope designated for a Lot as depicted on the Plat. The building size of the building containing the principal dwelling on any Lot shall not be less than three thousand (3,000) square feet nor more than seven thousand (7,000) square feet, exclusive of all areas utilized for garages and open porches. No structure of any kind shall be more than twenty-five (25) feet above natural grade. New construction on each Lot will include plumbing fixtures using low water use

technology. All Lots will utilize white or earth tones for exterior surfaces and non-reflective roofing materials. All construction materials shall be new, except for the limited use of antique treatments, fixtures and accessories. No building or structure originally constructed at another location shall be moved onto any Lot. Outside lawn/garden watering shall be limited to seven thousand five hundred (7,500) square feet per Lot.

7.4 Domestic Water. Domestic water shall be supplied to each Lot by a domestic water well drilled by the Declarant. The Declarant has obtained a domestic water well permit for each Lot in the Subdivision, and has drilled a domestic water well on each Lot pursuant to said permits.

7.5 Ownership and Use of Wells and Appurtenant Facilities. The Association will own the water rights and the well permits for the benefit of the Owners of all Lots. The individual Lot Owners using the well shall own the well facilities, pump, meter and all individual storage tank and pipelines. Each Lot Owner shall be the sole owner of any facilities used solely by that Lot. The individual Lot Owners benefitted by any well shall be solely responsible to operate, maintain, repair, and replace the well, pump, cistern, and water service lines. The Association shall be allowed a reasonable right of inspection and right of ingress and egress to and within each Lot for the purpose of inspection or administration or limiting the operation of individual wells in accordance with the BWCD, well permit and any subsequent plan for augmentation decreed as the same may be amended and in accordance with the Articles, Bylaws, and Rules and Regulations of the Association, and in accordance with these Protective Covenants.

7.6 Operation, Maintenance and Repair Costs. All operation, maintenance, replacement and repair costs associated with any well, the pump, meter, storage tank and associated facilities for the withdrawal of water from the wells shall be paid by the Lot Owner using that well. All Lot Owners shall be solely responsible for the costs of maintenance, operation, repair, and replacement of any facilities used solely by that party, including individual service lines and storage tanks. The Association shall be responsible to complete and pay the costs of any maintenance, operation, repair, replacement, or improvement of common facilities that it determines is necessary. In the event that the Association does not complete any required maintenance, repair, replacement, or improvement, any user shall be entitled to undertake the maintenance, repair, replacement or improvement necessary and essential for proper functioning of the common facilities and shall be entitled to reimbursement for the proportionate share of the costs that should be borne by the other users. Each well owner shall be responsible to maintain and repair his own well and facilities.

7.7 Initial Expenses to Install Pump, Meter and Common Pipelines. The wells have been drilled by Declarant. However should Declarant choose not install a pump, meter or other common facilities necessary for the use and operation of a well, a Lot Owner shall at his sole cost install all other workings as may be necessary. Individual Lot Owners shall install and maintain at their sole expense such measuring gauges on wells servicing their Lots within the Roaring Fork Preserve as may be required by the Division Engineer to allow for the operation of the plans for augmentation. Such measuring devices may include totalizing flow meters on individual wells.

7.8 Use of Water. The Owner of each Lot shall be entitled to use water from its respective well for one residential unit, seven thousand five hundred (7,500) square feet of irrigation each. Lots 3 through 8 shall be entitled to have up to two (2) horses per Lot and Lot 9 may have up to four (4) horses. An additional dwelling unit or guest house may be built on Lots for which an accessory dwelling unit has been approved. All such uses shall be made in accordance with the terms and conditions of the well permit. Each Lot Owner shall be entitled to use so much of the water from the well as that party needs so long as diversions from the well at no time exceed the maximum allowed by the well permit.

7.9 Waste. No Lot Owner shall waste water, and each Lot Owner shall exercise prudence and conservation in the use of water in order to allow for the efficient and beneficial use of the well on his Lot.

7.10 Additional Wells. The Association shall allow any Lot Owner to drill an individual well for his own use for his own Lot at his sole expense. In the event that an individual Lot Owner wishes to drill his own well, such Lot Owner shall file and obtain a well permit and an amendment to the Basalt Water Conservancy District contract (and to bifurcate the contract into separate contracts) and an augmentation plan, if necessary, at his own expense. Such new well shall be no less than one hundred (100) feet away from all other wells in the subdivision. All Lot Owners herein waive their right to have the well drilled at least six hundred (600) feet from the existing wells. Each Lot Owner shall execute a waiver of six hundred (600) foot spacing for the Division of Water Resources to allow for the issuance of a well permit for the new well.

7.11 Basalt Water Conservancy District Contract. A Basalt Water Conservancy District (BWCD) Contract has been obtained and is in full force and effect providing augmentation water for the wells. The Association shall pay all costs of said contract on an annual basis and shall abide by the terms and conditions of said contract. The contract shall be owned by the Association. All Lot Owners shall be required to pay their pro rata share regardless of water use. The Basalt Water Conservancy District will prepare and file an augmentation plan for the wells for the

benefit of the Association. Such costs will be charged to the Association and the Association shall pay said costs to ensure the continued legal viability of the augmentation plan. In the event that the BWCD decides that it will no longer file said augmentation plan and that each individual subdivision or owner shall be responsible to file its own plan, the Association shall be responsible to file said plan of augmentation and obtain a final decree at its own cost.

7.12 Wastewater Treatment. Wastewater treatment shall be supplied to each Lot by individual sewage treatment system ("ISTS") installed by each Owner in accordance with the ISTS Design and Performance Standards set forth in Article 8.10 and maintained by the Association in accordance with the provisions of the ISTS Maintenance Plan set forth in Article 8.11. The Association shall be responsible for setting all rates, fees or charges for inspecting, maintaining and repairing each individual system and such rates, fees or charges assessed by the Association against each Lot for such inspection, maintenance and repair shall be a personal obligation of the Owner thereof which the Association shall have the power and duty to enforce.

7.13 Fireplaces and Stoves. In order to protect against air quality degradation from the utilization of solid fuel burning devices, no open hearth solid fuel fireplaces shall be allowed. There shall be no restrictions on the number of natural gas burning fireplaces or appliances. Each dwelling unit will be allowed one (1) new wood-burning stove as defined by C.R.S. 25-7-401, et. seq., and the regulations promulgated thereunder.

7.14 Wildfire Prevention. The guidelines of the Colorado State Forester for wildfire prevention as presently specified in the pamphlet titled "Wildfire Protection in the Wildland Urban Interface" prepared by the Colorado State Forest Service (C.S.F.S. #143-691) or any successor document shall be followed in the construction of all future Improvements.

7.15 Fences and Hedges. The type and location of all fences and hedges will be subject to the approval of the Design Review Committee prior to installation. Only wooden fences shall be permitted within the Property, with limited exceptions for small gardens, kennels, play areas for small children or otherwise and only in circumstances where a wooden fence would not serve the required purpose. Barbed wire fencing shall be prohibited. The Design Review Committee shall consider the effect on wildlife activity prior to approving any requested fencing. Wood fencing shall not exceed forty-two (42) inches in height, shall not have more than two (2) horizontal poles with spacing of at least eighteen inches (18") between rails and with the bottom rail at least twenty-four inches (24") above the ground. No fences or hedges shall be constructed, grown or maintained on any Lot higher than six (6) feet above ground level, but this restriction shall not apply to patio fences attached to

dwellings. Outside storage of hay shall be in an enclosed game-proof fence eight (8) feet in height.

7.16 Fences Along Roads. Notwithstanding the provisions of Article 7.8 above, all Lot Owners shall be required to install along the portion of each Owner's Lot where adjacent to public roads split rail cedar fencing with three (3) rails consistent with the type of fencing installed by the Declarant at the entry into the Subdivision from County Road 100.

7.17 Fences for Horses. In the event that any Owner of Lots 3 through 9 wishes to have horses on said Owner's property, prior to any horses being brought onto the property, the Owner shall construct a boundary fence, together with gates as may be necessary to adequately and securely keep the horse(s) inside the fence and on the Owner's property. The Association may approve a single strand electrical wire to be used in conjunction with wooden fencing on those Lots where horses are kept.

7.18 Removal of Nonconforming Improvements. The Association, after reasonable notice to the offender and to the Lot Owner, may remove any Improvement constructed, reconstructed, refinished, altered or maintained violating these Covenants, and the Lot Owner of the Improvement shall immediately reimburse the Association for all expenses incurred in such removal.

7.19 Trees and Landscaping. There shall be no significant cutting or altering of live trees or bushes or natural vegetation growing on any Lot, and no further landscaping thereof except as may be authorized in writing by the Association, which authorization shall not be unreasonably withheld unless as required by Garfield County for fire protection. No irrigated yard and garden area shall exceed seven thousand five hundred (7,500) square feet in size. To the extent reasonably possible, all outside yard and garden irrigation shall utilize irrigation water from the Slough Ditch.

## A R T I C L E 8 **PROPERTY USE RESTRICTIONS**

8.1 General Restriction. The Property shall be used only for the private residential and other purposes as set forth in these Covenants as the same may be amended from time to time, as permitted by the applicable regulations of the County of Garfield and the laws of the State of Colorado •and the United States, or other specific recorded covenants affecting all or any part of the Property. Notwithstanding the foregoing, business activities associated with the sale of Lots or residences constructed thereon shall be allowed. In addition and subject to any applicable governmental regulation, in-home businesses or occupations not involving the



provision of services for customers or use of employees on site (other than the Lot Owners) shall be allowed, provided such activities are conducted solely within an enclosed structure and do not create or result in any nuisance or any unreasonable, unwarranted or unlawful use or interference with public or private rights, including, but not limited to, unreasonable or unwarranted use or interference with roads, excessive traffic, increased parking requirements, or any other offensive or noxious activities. Bed and breakfast operations shall not be permitted. This section shall not be construed to prohibit property caretakers or personal assistants being employed on the Property.

8.2 No Further Subdivision of Lots. No Lot described on the recorded Plat of Roaring Fork Preserve Subdivision shall ever be further subdivided into smaller Lots or conveyed or encumbered in any less than the full dimensions as shown on the recorded Plat of Roaring Fork Preserve Subdivision; provided, however, conveyance or dedications of easements for utilities may be made for less than all of one Lot. Notwithstanding the above, a boundary line adjustment by Lot Owners between two Lots shall be permitted provided that: (a) the approval of the Association and the County is first obtained; (b) the Lot Owners desiring such adjustment shall pay all reasonable costs incident thereto, including preparation, approval and recording of an amended Plat as may be required by the County and Declarant.

8.3 Vehicles. No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers, or similar vehicles (other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less) or any other vehicles shall be parked, stored, or in any manner kept or placed on any portion of the Property, except for vehicles which are kept in an enclosed garage or screened enclosure. This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Property or for approved construction by Declarant or Lot Owners. No Lot Owner or other person shall be permitted to operate snowmobiles or motorcycles which are not permitted to be driven on public roads.

8.4 Excavation or Fill. No excavation or fill shall be made except in connection with Improvements approved as provided in these Covenants. Any such excavation or fill must be approved in advance by the Association. For purposes of this Section, "excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting) which results in a removal of earth, rock or other substance a depth of more than eighteen inches (18") below the natural surface of the land. For the purposes of this Section, "fill" shall mean any importation and placement of earth, rock or other substance a height of more than eighteen inches (18") above the natural surface of the land.

Nothing contained herein shall be construed to diminish the ability of the Lot Owner to smooth out the existing undulations of any Lot.

8.5 Erosion and Vegetation Control. The surface of the Property, including all Lots, shall be maintained in a condition which will minimize the risk of soil erosion and weed infestation. All excavations, fills and other construction which disturb the existing vegetation shall be revegetated with weed free seed and mulch. Any disturbed area on a Lot shall be fully restored by the Lot Owner.

8.6 Signs. No signs of any kind shall be displayed to the public view on or from any portion of the Property, except ordinary real estate sale signs, signs approved by the Association, or signs required by law.

8.7 Animals and Pets. Except as provided in Article 8.8, no animal, livestock or poultry of any kind shall be kept, raised or bred on any Lot, except that not more than one (1) dog, two (2) cats, and other typical small household pets, such as birds and fish, shall be allowed. The following special requirements apply to the dogs permitted on each Lot:

A. Each dog shall be kept under the control of the Lot Owner and on a leash at all times when outside a fenced area or structure and shall not be permitted to run free or to cause a nuisance on the Property.

No dog shall be allowed to bark excessively, which is defined as barking more or less continuously during any fifteen (15) minute period.

C. Each dog shall be leashed or kept in a humane kennel or run at all times. Metal chain link fencing will be allowed for the purposes of kenneling a dog. The location and style of each kennel shall be subject to review by the Design Review Committee. A kennel shall be installed prior to issuance of a Certificate of Occupancy for any Lot if the Lot Owner possesses a dog at such time and, in any event, prior to the introduction of a dog on any Lot.

D. All Lot Owners shall keep dogs reasonably clean and free of disease and all Lots shall be kept free of animal waste.

E. Should any dog chase or molest deer, elk, poultry or any domestic animals or persons, or destroy or disturb property of another, the Association may prohibit the Lot Owner from continuing to keep the offending dog on such Owner's Lot. If necessary, to protect wildlife or other Owners' domestic animals, persons or property, the Association may take additional steps, including the impoundment of the offending dog. Except in an emergency or as provided by law, the Owner of an offending dog shall be provided written notice of such action at least

five (5) days before disposal occurs. Such notice shall be posted on the front door of the residence of the Owner of the offending dog. Within such five (5) day period, the offending dog may be kenneled at a licensed kennel with all costs incurred by the Association assessed against the Owner.

F. The Association shall assess and enforce penalties against Owners violating the restrictions applying to dogs as follows: One Hundred Dollars (\$100.00) for the first violation. The fine shall be increased by One Hundred Dollars (\$100.00) for each succeeding violation. In addition, the Association may impose fees for dog registration or other dog control services, impose regulations regarding the keeping of dogs on any Lot, and levy fines against Owners who violate this Covenant or any of the regulations promulgated hereunder or subsequently by the Association. The schedule of fees and fines established shall be sufficient to recover all of the costs of this animal control program on an annualized basis.

8.8 Horses. Up to two (2) horses may be kept on Lots 3 through 9 and up to four (4) horses may be kept on Lot 9, subject to the terms of these Covenants and any rules established from time to time by the Association. The Lot Owner of any Lot with horses shall be solely responsible for keeping the horse(s) on the Lot Owner's Lot and for any damage or injury caused by said horse(s) if off of said Lot.

8.9 Drainage. No Lot Owner shall do or permit any work, construct any Improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Property, or cause any discharge onto any adjacent property, except to the extent such alteration, and drainage pattern is approved in writing by the Association and any other affected property owner.

8.10 ISTS Design and Performance Standards. Each ISTS installed within the Property shall comply with the following requirements:

A. Each system shall be designed by a professional engineer registered in the State of Colorado pursuant to C.R.S. 12-25-111 (1999). The recommended supplier of ISTS systems is:

Cromaglass Corporation  
P.O. Box 3215, 2902 North Beach Road  
Williamsport, PA 17701  
(570) 326-3396 - phone  
(570) 326-6426 - fax  
email: [mailinfo@cromaglass.com](mailto:mailinfo@cromaglass.com)  
Web Site: [www.cromaglass.com](http://www.cromaglass.com)

B. Each system design shall adequately address the soil percolation conditions present at the Lot site, which percolation rates shall be verified through appropriate on-site testing;

C. Each system shall be designed to adequately service at least four (4) bedrooms;

D. Each system design, through the incorporation of recirculating trickling filter, sequencing batch reactors and/or other accepted on-site wastewater treatment system technologies, shall be capable of producing effluent quality which meets or exceeds the requirements of the United States Environmental Protection Agency for secondary wastewater treatment (30mg/L BOD and 30 mg/l. suspended solids);

E. The tops of all tanks or risers extending therefrom shall be surface accessible to facilitate system testing and maintenance; and

F. all absorption fields shall be sized to adequately service four (4) bedrooms. Trench segments with at least six (6) feet of separation shall be used whenever practically feasible. A minimum of three (3) similarly sized trench segments should be installed with alternating valves or a distribution box that allows isolation of each segment. Monitoring pipes shall be installed at the far end of each trench segment to allow inspection of field condition. If a bed must be utilized, single dosed zones shall be acceptable. If mounding is required to establish four (4) feet of suitable soil, a single pressure dosed zone shall be acceptable. If a bed or mound is,used, a minimum of two (2) monitoring pipes shall be installed at the far end of the bed or mound.

Following ISTS installation, each Lot Owner shall provide the Association with as-built drawings depicting, in relation to the other Improvements on the Lot, the location and dimensions of the ISTS facilities, including the absorption field and monitoring pipes, all applicable design, operation and maintenance specifications of the system's manufacturer and written certification from the designing engineer that the ISTS was installed in conformance with the requirements above stated and all applicable design specifications of the manufacturer.

In the event the Association fails to properly implement and enforce the design and performance standards set forth in this Article 8.10, the Board of County Commissioners for Garfield County, Colorado, and its duly authorized representatives and agents, shall have all the right to enter upon the Property and implement and enforce such standards at the expense of the Association or exercise any other right or power afforded under this Declaration or the Act, including, but not limited to, the

initiation of appropriate proceedings in the District Court for Garfield County, Colorado, to compel enforcement of the same.

The provisions of this Article 8.10 shall not be amended or repealed by the Declarant, Association or Lot Owners without the written consent of the Board of County Commissioners for Garfield County, Colorado.

#### 8.11 ISTS Management Plan.

A. In order to ensure that each ISTS installed within the Property is inspected on a regular basis and properly maintained, the responsibility and authority for such inspection and maintenance shall be vested exclusively within the Association. This management plan is not intended to provide for common ownership of the ISTS's or to provide common funding for the construction, repair and maintenance thereof, such ownership and responsibility for construction, repair and maintenance to remain with the Lot Owner.

B. In accordance with the above, the Association shall:

(1) retain at all times, the services of qualified personnel holding, at a minimum, a Class C wastewater treatment operator's license issued by the Colorado Department of Health and Environment to inspect the ISTS's and to perform all maintenance and repairs necessary to ensure that same are installed properly, remain in good operating condition and comply with the performance requirements set forth within Article 8.10;

(2) inspect the operating components of each ISTS within thirty (30) days of being placed in operation; thereafter, each ISTS shall be inspected at least quarterly;

(3) test the BOD and TSS content of the effluent being discharged by each ISTS at least biannually; and

(4) maintain at all times written or other permanent records documenting the date each ISTS was inspected or tested, the results of such inspections or tests and the extent of all maintenance and/or repairs performed. All documents maintained by the Association pursuant to this provision shall at all times be available for inspection by the Lot Owners and/or authorized representatives of the Garfield County Department of Building and Planning.

C. The following provisions shall apply in the event the estimated maintenance or repair costs required of any ISTS exceed \$1,000.00 in total during any one calendar year:

(1) the Association shall give the Lot Owner written notice of the nature and extent of the work necessary, to return the ISTS to good operating condition and/or bring the ISTS System within the performance requirements set forth within Article 8.10; and

(2) within thirty (30) days of receipt of such notice, Owner shall, at his or her own expense, cause to be completed, the repairs set forth within the notice. In the event Owner fails to complete such repairs within this time period to the satisfaction of the Association, the Association shall have the authority, in addition to any other remedy provided within this Declaration or the Act, to take any of the following actions:

(a) to impose against Owner, a fine not to exceed \$200.00 for each day in which the System remains unrepaired; and/or

(b) to discontinue domestic water service to Owner's Lot; and/or

(c) to complete on behalf of the Owner the required repairs to the ISTS. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 5 of this Declaration.

D. In the event the Association fails to properly implement and enforce the provisions of this management plan set forth in this Article 8.11, the Board of County Commissioners for Garfield County, Colorado, and its duly authorized representatives and agents, shall have all the right to enter upon the Property and implement and enforce such provisions at the expense of the Association or exercise any other right or power afforded under this Declaration or the Act including, but not limited to, the initiation of appropriate proceedings in the District Court for Garfield County, Colorado, to compel enforcement of the provisions of this management plan.

E. The provisions of this Article 8.11 shall not be amended or repealed by the Declarant, Association or Lot Owners without the written consent of the Board of County Commissioners for Garfield County, Colorado.

8.12 Sanitation. No trash, ashes, garbage, rubbish, debris or other refuse shall be thrown, dumped or allowed to accumulate on the Property. There shall be no burning of refuse. Each Lot Owner shall provide suitable receptacles for the temporary storage and collection of refuse. All such receptacles shall be screened

from the public view and protected from wind, animals and other disturbances. Each Lot shall be kept in a reasonably sanitary condition, free of offensive odors and protected from rodent and insect infestations.

8.13 Temporary Structures. No temporary structures shall be permitted except as may be determined to be necessary during construction and specifically authorized by the Association.

8.14- Towers and Antennae.- No towers or exterior radio, television and communications antennae shall be permitted without the prior written consent of the Association. Dish receivers in excess of eighteen inches (18") in diameter shall be screened from view.

8.15 Outside Burning. There shall be no exterior fires, except barbecues, outside fireplaces and braziers. No Lot Owner shall permit any condition upon such Lot Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations.

8.16 Noise. No exterior speakers, horns, whistles, bells or other sound devices, except security devices, shall be placed or used on any portion of the Property. Lot Owners shall not permit any noise or disturbance on their respective Lots which is offensive, disturbing or otherwise detrimental to any other person.

8.17 Odor. No odor shall be emitted from any Lot which is noxious or unreasonably offensive to others.

8.18 Lighting. All flood lighting, security lighting or other kind of high intensity lighting shall be directed downward and toward the interior of the Property and otherwise shielded to prevent glare on adjacent Lots or outside the Property.

8.19 Obstructions. There shall be no obstruction or interference with the free use of the roadway, water system or any easement, except as may be reasonably required for repairs. The Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of any easement. The Association shall have a right of entry on any part of the Property for the purposes of enforcing this Section. Any costs incurred by the Association in connection with such enforcement shall be assessed to the persons responsible for the interference.

8.20 Service Facilities. All clothes lines, storage tanks, equipment, service yards, wood piles and similar service facilities shall be screened by adequate planting or fencing so as to conceal same from other Lots, adjoining properties, and roads. Any refuse or trash containers, utility meters or other facilities, service areas, or

storage piles shall be enclosed within a structure or appropriately screened from view by planting or fencing approved by the Association and adequate to conceal the same. No lumber, metals, boat materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction and only for such reasonable periods of time as is necessary prior to their collection or disposal, or except as are screened by adequate planting or fencing so as to conceal the same from other Lots, adjoining properties, and roads.

8.21 Maintenance of Landscaping. Each Lot Owner shall keep the landscaping situate on such Owner's Lot in a neat and well maintained fashion, shall properly irrigate the lawns and other planting on such Lot, and shall otherwise maintain the appearance of such Lot in a first class condition.

8.22 Continuity of Construction. All Improvements commenced on the Property shall be prosecuted diligently to completion and shall be complete within twelve (12) months of commencement, unless an exception is granted in writing by the Association.

8.23 Hunting and Firearms. Firearms shall not be discharged on the Property and no hunting shall be allowed.

8.24 Nuisances. No obnoxious or offensive activity shall be carried on within the Property so as to unreasonably interfere with or disturb the use, enjoyment and access of any other occupant of the Property, nor shall anything be done, permitted or placed thereon which is or may become a nuisance or cause an unreasonable offense, embarrassment or disturbance or annoyance to others.

8.25 Compliance With Laws. Subject to the rights of reasonable contest, each Lot Owner shall promptly comply with the provisions of all applicable laws, regulations and ordinances with respect to the Property including, without limitation, all applicable environmental laws and regulations.

8.26 Underground Utility Lines. With respect to the new construction of any Improvements within Roaring Fork Preserve Subdivision or the extension of any utilities, all water, gas, electrical, telephone, and other utility pipes or lines within the limits of Roaring Fork Preserve Subdivision shall be buried underground and not be carried on overhead poles or above the surface of the ground. Any area of natural vegetation or terrain in Roaring Fork Preserve Subdivision disturbed by the burying of utility lines shall be revegetated within twelve (12) months of completion of any Improvement by and at the expense of the Lot Owner or Owners causing the installation of the utilities.



8.27 Dust Control. The Association shall be responsible for ongoing dust control of the private emergency access roads in Roaring Fork Preserve Subdivision. Individual Lot Owners shall be responsible for ongoing dust control of their private driveways. The private emergency access roads and driveways within Roaring Fork Preserve Subdivision shall be monitored by the Association to insure minimal dust pollution. Roads and driveways shall be treated as necessary with magnesium chloride or other dust suppressants approved by the Garfield County Environmental Health Department. The Association shall have the right to treat private driveways and charge the Owner, if the Owner fails to fulfill Owner's responsibility for individual dust control.

8.28 No Mining, Drilling, or Quarrying. Mining, quarrying, tunneling, excavating, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock and earth, shall not be permitted within the limits of Roaring Fork Preserve Subdivision except as allowed by this paragraph. Drilling for water by the Declarant, the Association, and any individual Lot Owner or their respective successors and/or assigns, for domestic purposes is hereby expressly permitted within the limits of Roaring Fork Preserve Subdivision.

8.29 Weed Control/Vegetation Management Plan. The Association shall implement and follow a program of noxious weed control which may address the control and elimination of Canadian Thistle and other plant species included on the Garfield County Noxious Weed List. In general, the weed control/vegetation management plan should consist of the following components:

A. Prevention and Control. The quick revegetation of disturbed areas with weed free grass seed and the maintenance of native or introduced vegetation in a healthy, vigorous condition producing optimum vegetative densities will leave noxious weeds little opportunity to establish. The use of hay that is certified as weed free is also recommended.

B. Inventory. Each Lot should be inspected to identify any infestations of noxious weeds. An accurate record should be kept of the application and success of weed infestation eradication efforts.

C. Eradication. Elimination of noxious weeds can be achieved through:

(1) Mechanical Controls physically remove the entire weed plant or eliminate the plant's ability to produce seed.

(2) Biological Controls rely on organisms (insects or plant pathogens) to interfere with weed growth.

(3) Chemical Controls use herbicides to eliminate weeds. Special care must be used with herbicides to avoid damage to desirable plant species and to avoid contamination of ground water.

An effective weed management program may involve all three methods of eradication as well as a long term commitment to prevention and control. Assistance in the development and implementation of a weed management program is available through the Colorado State University Cooperative Extension Service and from the Garfield County Office of Vegetation Management.

It is the individual Lot Owner's responsibility, according to the Colorado Noxious Weed Act and Garfield County's Weed Management Plan, to manage any noxious weeds on his or her property. In the event a property owner fails to effectively control noxious weeds on their Lot, the Association shall have the right to enter upon any Lot and conduct a weed control program within the area of such Lot.

D. Vegetation Management Plan. The Association has obtained a Vegetation Management Plan for Roaring Fork Preserve Subdivision, prepared by Beech Environmental, LLC. A copy of this plan is available for inspection at the offices of the Association. Said Vegetation Management Plan is incorporated herein as if set forth verbatim. The Association shall implement and follow a program of vegetation management as outlined by said Vegetation Management Plan, as the same now exists or may be amended or supplemented from time to time.

8.30 Water Quality Monitoring. Each well shall be constructed in accordance with the State of Colorado Water Well Construction rules and regulations. Water quality tests shall be performed based on applicable Colorado Department of Public Health and Environment and the Environmental Protection Agency standards for service level assigned to each well. As a minimum, the Association will select one well within the Subdivision that will be tested on a semi-annual basis for bacteria, nitrates, pesticides and herbicides.

8.31 Damage by Lot Owners. Each Lot Owner is responsible for any damage caused to Roads, ditches, fences, trails, natural drainage courses, utilities, Association property, or to other Lots or property thereon during the construction of Improvements upon his Lot by any vehicle belonging either to him or any one using the Roads while engaged in any activity benefitting the Lot Owner. Each Lot Owner shall also be responsible for any damage caused by utility cuts in Roads, washouts and runoff damage caused by failure to properly install culverts, and to repair any such damage in a timely manner.

A R T I C L E 9  
**MAINTENANCE**

9.1 Association's Maintenance Responsibility. The Association shall maintain and keep the Common Elements in good condition and repair, the cost of which shall be included as part of the Common Expenses, subject to the Bylaws and Association Rules. If, due to the act or neglect of a Lot Owner or a Lot Owner's invitee, guest or any other occupant of a Lot, damage shall be caused to the Common Elements or to a Lot owned by another, then such Lot Owner shall pay the costs of repair and maintenance as may be determined necessary or appropriate by the Association. Such obligation shall be an Assessment against such Lot Owner secured by the lien provided for in Section 5.1 above.

9.2 Lot Owner's Maintenance Responsibility. Except as provided otherwise in the Declaration or by written agreement with the Association, all maintenance of individual Lots, including, without limitation, all Improvements, individual sewage disposal systems (ISTS), utility systems and utility lines from the point of connection to the common system shall be the sole responsibility of the respective Lot Owners. Each Lot shall be maintained in a good, clean and attractive condition and repair consistent with the requirements of a first class residential development. In the event a Lot Owner should fail to keep any utility system (including any ISTS) in good repair, the Association, without limiting any other remedy available under this Declaration or applicable law, may enter upon said Lot for the purpose of inspecting such utility system and if the Lot Owner refuses to make necessary repairs, the Association may do so and the costs of such repairs shall be charged to the Lot Owner and collected pursuant to Article 5 of this Declaration. Not less than biennially, each Lot Owner shall provide the Association evidence of an inspection and necessary pumping of such Lot Owner's ISTS.

**ARTICLE 10**  
**INSURANCE**

10.1 Types of Insurance. The Association shall obtain and keep in full force and effect the following insurance coverage, if determined appropriate by the Executive Board:

A. Property and fire insurance with extended coverage and standard all-risk endorsements, including vandalism and malicious mischief, on Association property. The total amount of insurance, after application of deductibles, shall be one hundred percent (100%) of the replacement value of the insured property exclusive of land, foundations and other items normally excluded from property policies.

B. Public liability and property damage insurance, including medical payments insurance, in an amount determined to be sufficient in the judgment of the Executive 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, including but not limited to entryway and water features. This policy shall also cover operation of automobiles or other vehicles or equipment on behalf of the Association. This policy shall extend to the trail system set forth on the Plat.

C. Workmen's compensation and employer's liability insurance in the amounts and in the forms required by law.

D. Fidelity coverage against the dishonesty of employees, destruction or disappearance of money or securities, and forgery. This policy shall also cover persons who serve the Association without compensation.

E. Coverage of members of the Executive Board and officers of the Association against libel, slander, false arrest, invasion of privacy and errors and omissions and other forms of liability generally covered in officers and directors liability policies.

F. Insurance against loss or damage to persons or property for ditch or dam failure.

G. Coverage against such other risk of a similar or dissimilar nature as the Executive Board deems appropriate.

H. If the insurance described in (A) or (B) is not reasonably available or if any policy is canceled or not renewed without a replacement policy, the Association shall promptly provide notice of any omitted coverage to all Lot Owners either by personal delivery or by U.S. Mail, prepaid.

I. The insurance policies required pursuant to (A) and (B) above, shall provide that each Lot Owner is an insured person under the policy with respect to liability arising out of such Lot Owner's membership in the Association, shall waive the right of subrogation against any Lot Owner or member of his household, and shall provide that no act or admission by any Lot Owner, unless acting within the Lot Owner's scope of such authority on behalf of the Association will void the policy or be a condition to recovery under the policy. If at the time of a loss under any policy pursuant to (A) and (B) above, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Nothing contained herein shall limit the authority of the Executive Board of the Association to determine that different, greater, or lesser types of insurance coverage are appropriate for the Association.

10.2 Named Insured and Interests. The Association shall be the named insured under each of said policies. Where appropriate or required by the Act, the named insured shall include the Declarant and the officers and directors of the Association. Where appropriate or required by the Act, separate Owners shall also be named insureds. The certificate or memoranda of insurance, duplicate originals of all policies and renewals, and proof of payment of premiums shall be issued to the Association, and upon request, to Declarant and to any Lot Owner who is a named insured or to any eligible Mortgage holder.

10.3 Insurance Proceeds. The Association shall receive the proceeds of any insurance purchased by the Association in trust for the Lot Owners and any lienholders as their interests may appear. Subject to the provisions of the Act, in the event of damage or destruction due to fire or other disaster, if the insurance proceeds are sufficient to reconstruct the Improvements, the Association shall promptly cause such reconstruction to occur. If the insurance proceeds are not sufficient for such purpose, the Association may levy a Special Assessment against the Lot Owners for such deficiency. Any portion of the Common Elements for which insurance is required under this Section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (i) The Roaring Fork Preserve Subdivision is terminated; (ii) repair or replacement would be illegal under any local statute or ordinance governing health or safety; (iii) eighty percent (80%) of the Lot Owners vote not to rebuild; or (iv) prior to the conveyance of any Lot to a person other than Declarant, the holder of a Mortgage on the damage portion of the Common Elements rightfully demands all or substantial part of the insurance proceeds.

10.4 Lot Owner's Insurance Responsibility. Each Lot Owner shall maintain all insurance coverage for such Owner's Lot as deemed appropriate by such Lot Owner. In addition, each Lot Owner shall be responsible for insuring all personal property on the Lot, as well as general liability insurance and any other insurance coverage deemed appropriate by such Lot Owner.

## **A R T I C L E   1 1**

### **ENFORCEMENT OF COVENANTS**

11.1 Violation Deemed a Nuisance. Every violation of this Declaration or of the rules promulgated by the Executive Board is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation

of these Covenants shall be available. In addition to all other remedies contained herein, the Association shall have the right to impose on any Lot Owner monetary fines for any lack of compliance with provisions of this Declaration or rules promulgated by the Executive Board and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of the Association to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provision or the enforcement thereof.

11.2 Compliance. Each Lot Owner and any other occupant of any part of the Property shall comply with the provisions of these Covenants and the rules promulgated by the Executive Board as the same may be amended from time to time. Failure to comply with these Covenants or the rules promulgated by the Executive Board shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both.

11.3 Fines. In addition, the Association shall have the right to impose on any Lot Owner monetary fines for any lack of compliance with provisions of this Declaration or rules promulgated by the Executive Board or the Association and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of the Association to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provision or the enforcement thereof.

11.4 Who May Enforce. Any action to enforce these Covenants or the rules promulgated by the Executive Board may be brought by the Declarant or the Executive Board in the name of the Association on behalf of the Lot Owners. If, after a written request from an aggrieved Lot Owner, neither of the foregoing entities commence an action to enforce these Covenants, then the aggrieved Lot Owner may bring such an action.

11.5 Non-exclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

11.6 Non-liability. No member of the Executive Board, the Declarant, the Association or any Lot Owner shall be liable to any other Lot Owner for the failure to enforce these Covenants at any time.

11.7 Recovery of Costs. If legal assistance is obtained to enforce any provision of these Covenants, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of these Covenants or the restraint of

violations of these Covenants, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

A R T I C L E 1 2  
MISCELLANEOUS PROVISIONS

12.1 Severability. This Declaration, to the extent possible, shall be liberally construed or reformed to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall not invalidate any other provision. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is declared by a court of competent jurisdiction to be contrary to or in violation of the Act, this Declaration shall be automatically amended to replace such provision with a new provision, as similar thereto as practicable, but which is not contrary to or in violation of the Act.

12.2 Construction. In interpreting words in the Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

12.3 Headings. The headings are included only for reference and shall not affect the meaning or interpretation of this Declaration.

12.4 Notice. All notices or requests required shall be in writing. Notice to any Lot Owner shall be considered delivered and effective upon personal delivery, or three (3) days after posting when sent by certified mail, return receipt requested, to the address of the Lot Owner on file in the records of the Association at the time of the mailing. Notice to the Association or the Executive Board shall be considered delivered and effective upon personal delivery, or three (3) days after posting when sent by certified mail, return receipt requested, to the Association or the Executive Board at the address established by the Association from time to time by notice to the Lot Owners. General notices to all Lot Owners need not be certified, but may be sent by regular first class mail.

12.5 Waiver. No failure by the Association or the Executive Board to give notice of default or any delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above. No waiver shall be effective unless it is in writing signed by the President or Vice President of the Executive Board on behalf of the Association.

12.6 Amendments. Except as otherwise provided by the Act (including amendments by the Declarant and the Association which are expressly permitted by

the Act), this Declaration shall not be amended unless at least (i) sixty-six and two-thirds percent (66<sup>2</sup>/<sub>3</sub>%) of the Lot Owners and (ii) fifty-one percent (51%) of the First Mortgagees (based on one vote for each First Mortgage held) have given their prior written approval. Notwithstanding the foregoing, and except to the extent expressly permitted or required by the Act, no amendment may (i) create or increase special Declarant rights, (ii) increase the number of Lots, (iii) change the allocated interests of a Lot, or (iv) change the uses to which any Lot is restricted in the absence of unanimous consent of the Lot Owners. Unless a First Mortgagee provides the Secretary of the Association with written notice of its objection to a proposed amendment within thirty (30) days following the First Mortgagee's receipt of notice of such proposed amendment, the First Mortgagee will be deemed conclusively to have approved the proposed amendment. The term "Mortgage" shall include a Deed of Trust and the term "Mortgagee" shall include a beneficiary under a Deed of Trust. No amendment which conflicts with the provisions of the resolutions for the Roaring Fork Preserve Subdivision or the Plat shall be effective. Any instrument amending this Declaration shall be in the form required by the Act and duly executed by the President and Secretary of the Association and recorded in the real property records of the County.

12.7 Term. This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation until December 31, 2015. Thereafter, these Covenants shall be automatically extended for five (5) successive periods of ten (10) years each, unless otherwise terminated or modified as provided herein or by the Act.

12.8 Indemnity. The Association shall indemnify and hold the Colorado Division of Wildlife harmless from any and all claims for damage to landscaping Improvements, fencing, ornamental and native plants, and garden plants resulting from wildlife.

12.9 Variances. The Association may, by the majority vote of the members constituting a quorum at a meeting of the Association, grant reasonable variances from the strict compliance with the provisions of this Declaration in the case of undue hardship or other reasons deemed valid by those voting in favor thereof . The Lot Owners of all of the Lots shall be given at least twenty (20) days advance written notice setting forth the time and place of the meeting of the Association at which time any request for a variance is to be considered and describing the requested variance. Lot Owners or their representatives shall be afforded the opportunity to appear before the meeting of the Association and be heard with respect to the requested variance.

12.10 Binding Effect. Each Lot Owner, his lessees, families and guests, the heirs, successors or assigns of a Lot Owner, or any Mortgagee, and any other persons



using or occupying a Lot, shall be bound by and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions and covenants and all rules, regulations and agreements lawfully made by the Association.

12.11 Rule against Perpetuities. If any of the terms, covenants, conditions, easements, restrictions, uses, limitations or obligations created by this Declaration shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing like or similar time limits, such provision shall continue only for the period of the life of David McMorris, his now living descendants, and the survivor of them, plus twenty-one (21) years.

12.12 Termination. This Declaration may be terminated only if all the Lot Owners and eligible Mortgage holders agree to such termination by an executed acknowledged instrument duly recorded in the real estate records of Garfield County, Colorado. This Declaration shall also terminate in the event of the taking of all of The Roaring Fork Preserve Subdivision by condemnation or eminent domain or abandonment or termination as provided by the Act. Any termination shall be in accordance with the requirements of the Act.

12.13 Disbursement of Proceeds. Unless otherwise required by the Act, upon the termination of this Declaration all property owned by the Association shall be sold by the Association either in whole or in part as the Executive Board may deem appropriate. The funds shall be disbursed without contribution from one Lot Owner to another by the Association for the following purposes and in the following order:

- A. payment of all customary expenses of the sale;
- B. payment of all applicable taxes and special Assessment Liens in favor of any governmental authority;
- C. payment of the balance of any liens encumbering Association property;
- D. payment of any unpaid costs, expenses and fees incurred by the Association; and
- E. payment of any balance to' the Lot Owners in the same proportion that they pay Association Assessments; provided, however, there shall be deducted from any share due a Lot Owner any delinquent and unpaid Association Assessments.

12.14 Condemnation of Association Property. If any Association property is taken or condemned by any authority having the power of eminent domain, all compensation and damages on account of the taking of the Association property, exclusive of compensation for consequential damages to affected Lots, shall be payable to the Association and such proceeds shall be used promptly by the Association to the extent necessary for repair and reconstruction of remaining Association property in as substantial compliance to the original plan of development as possible. If there is an award in excess of the amount necessary to so substantially repair or reconstruct such remaining Association property, it shall, at the Executive Board's discretion, be either refunded or retained by the Association for such uses as it deems appropriate.

12.15 Condemnation of Lots. If any Lot or a portion of any Lot is taken or condemned by any authority having power of eminent domain, such taking shall be in the manner provided for in the Act.

12.16 Applicable Law and Venue. The interpretation, enforcement or any other matters relative to this Declaration shall be construed and determined in accordance with the laws of the State of Colorado. Any action to enforce, interpret or otherwise pertaining to this Declaration shall be commenced in the District Court for Garfield County, Colorado.

12.17 Conflict with Plat. In the event of any conflict or inconsistency between the provisions of this Declaration and the Plat, including the Plat notes thereon, the provisions of said Plat or Plat notes, as the case may be, shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Plat, including any Plat notes.

12.18 Provisions Incorporated in Deeds. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot is granted, devised, conveyed or encumbered, whether or not set forth or referred to in such deed or other instrument.

12.19 References to County Standards. Wherever in this Declaration there is a reference to County land use regulations, zoning, other County standards, the approval resolutions for the Roaring Fork Preserve Subdivision, any Plats approved by the County or any other federal, state or local rule, law or regulation, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such regulations, zoning, other County standard, Plats or any other rule or law.

12.20 Run with the Land. Declarant, for itself, its successors and assigns, hereby declares that all of the Roaring Fork Preserve Subdivision shall be held, used and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Lot Owner of any interest in the Roaring Fork Preserve Subdivision.

12.21 Supercedes and Replaces Previously Recorded Covenants. This Restated Declaration of Covenants, Conditions, Restrictions and Easements for Roaring Fork Preserve Subdivision supercedes and replaces in its entirety the Declaration of Covenants, Conditions, Restrictions and Easements recorded on May 23, 2002, as Reception No. 603998 in Book 1357 at Page 225 of the records of the Clerk and Recorder of Garfield County, Colorado, which previously recorded Declaration shall be of no further force and effect.

       IN WITNESS WHEREOF, the Declarant has executed this Declaration this        day of       , 2002.

ROARING FORK PRESERVE, LLC,  
a Colorado limited liability company

By: *Dave S. McMorris*  
Dave McMorris, Manager

STATE OF COLORADO

SS.

COUNTY OF GARFIELD

The foregoing instrument was acknowledged before me this   2   day of   01  , 2002, by Dave McMorris as Manager of Roaring Fork Preserve, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:   -1 - 0   LI

*Janice E. [Signature]*  
Notary Public



## Exhibit "A"

A parcel of land situated in Government Lots 12 and 13 in Section 35, and in Government Lots 14 and 15 in Section 36, Township 7 South, Range 88 West of the Sixth Principal Meridian, County of Garfield, State of Colorado, said parcel lying northerly of the northerly right-of-way of Garfield County Road No. 100, and being more particularly described as follows:

Beginning at the North right-of-way line of Garfield County Road No. 100, from which the witness corner for the South quarter corner of Section 35, a No. 6 rebar found in place bears South 81°49'57" West 1416.62 feet (record tie: South 81°55' West 1417.05 feet); thence along said right-of-way South 87°28'17" East a distance of 425.14 feet; thence along said right-of-way South 88°35'41" East a distance of 154.64 feet; thence along said right-of-way North 88°45'26" East a distance of 310.37 feet to the TRUE POINT OF BEGINNING; thence North 01°14'34" West a distance of 1206.34 feet to a rebar and cap, PLS #26950; thence North 67°39'44" West a distance of 478.58 feet to a point on an existing fenceline being a rebar and cap, PLS #26950; thence along said fenceline North 00°40'07" East a distance of 410.00 feet to a rebar and cap, PLS #26950; thence South 65°12'47" East a distance of 389.37 feet to a rebar and cap, PLS #26950; thence South 78°31'47" East a distance of 82.93 feet to a rebar and cap, PLS #26950; thence South 62°09'01" East a distance of 155.56 feet to a rebar and cap, PLS #26950; thence North 66°12'16" East a distance of 185.69 feet to a rebar and cap, PLS #26950; thence South 78°29'52" East a distance of 277.46 feet to a rebar and cap, PLS #26950; thence South 65°19'05" East a distance of 252.12 feet to a rebar and cap, PLS #26950; thence South 89°58'08" East a distance of 420.28 feet to a rebar and cap, PLS #26950; thence North 30°22'30" East a distance of 251.43 feet to a rebar and cap, PLS #26950; thence North 72°44'29" East a distance of 264.93 feet to a rebar and cap, PLS #26950; thence North a distance of 740.00 feet to a rebar and cap, PLS #26950; thence North 89°53'49" East a distance of 600.00 feet to a rebar and cap, PLS #18478 at the Northeast corner of Government Lot 14 in Section 36; thence South 00°16'36" East a distance of 674.92 feet to the Southeast Corner of Government Lot 14, also being the Northeast corner of Government Lot 15; thence South 00°16'36" East a distance of 1413.08 feet along the easterly line of said Government Lot 15, to the Northeast corner of that parcel of land described in Book 763 at Page 727; thence the following ten (10) courses along the northerly and westerly lines of those parcels of land described in Book 763 at Page 727 and in Book 765 at Page 933 of the. Garfield County Records:

- 1) South 22°04'22" West 22.78 feet;
- 2) South 02°38'40" West 115.26 feet;
- 3) South 78°59'17" West 220.50 feet;
- 4) South 81°58'57" West 266.62 feet;
- 5) North 81°47'11" West 67.60 feet;
- 6) North 84°42'56" West 88.95 feet;
- 7) North 84°42'56" West 114.68 feet;
- 8) South 79°02'17" West 120.81 feet;
- 9) North 87°27'14" West 227.54 feet;
- 10) South 15°25'16" West 192.83 feet to the northerly right-of-way of Garfield County Road No. 100; thence along said right-of-way South 88°45'26" West a distance of 1028.69 feet to the TRUE POINT OF BEGINNING