

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
TWO RIVERS**

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
TWO RIVERS**

THIS DECLARATION is made by 2 Rivers, LLC, a Colorado limited liability company, 202 N. F St. B-2, P.O. Box 745, Salida, Colorado 81201 (“Declarant”).

PART ONE - INTRODUCTION TO THE COMMUNITY

2 Rivers, LLC, as the developer of Two Rivers, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Two Rivers, a planned community, all in accordance with the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq.

**ARTICLE I
STATEMENT OF PURPOSE AND DECLARATION**

Section 1.1. Owner. Declarant is the owner of the real property located in Chaffee County, Colorado, described in Exhibit A (the “Property”).

Section 1.2. Purpose and Intent. The purpose of this Declaration is to establish a general development plan for the planned community known as Two Rivers. This Declaration provides a flexible and reasonable procedure for Two Rivers’ future expansion as Declarant deems appropriate and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of the Two Rivers Community Association, an association comprised of all owners of real property in Two Rivers, to own, operate, or maintain the Common Elements and community improvements and to administer and enforce this Declaration and the other Association Documents. Declarant sells and conveys the portion of the Property designated on the Plat or by the Declaration as Common Elements (including Limited Common Elements) to the Association to create this planned community.

Section 1.3. Binding Effect. To accomplish the purposes indicated above, Declarant declares that from the date of recording of this Declaration forward, the Property described in Exhibit A and any property which is made a part of the Project in the future shall constitute a planned community, and shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements. These covenants shall run with the Property and will inure to the benefit of and are binding upon all persons having any right, title or interest in all or any part of the Property, including Declarant, the Association, Owners and their heirs, successors and assigns, and their Guests.

Section 1.4. Initial Plan for Development. The Project shall initially contain sixty four (64) Lots, some of which may be subdivided into additional dwelling units, including condominium or apartment Units. The Project may be expanded as provided in that Article entitled Development Rights, and upon completion will consist of a maximum of two hundred

eighty (280) Units. The identification number of each Lot is shown on the Plat recorded as a part of this Declaration in the Chaffee County, Colorado real property records (the "Plat").

Section 1.5 Association Documents.

a. The Association Documents consist of the following, as they may be amended:

ASSOCIATION DOCUMENTS	
Articles of Incorporation (filed with the Colorado Secretary of State)	establish the Association as a non-profit corporation under Colorado law
Bylaws (the Executive Board adopts)	govern the Association's internal affairs, such as voting, elections, meetings, etc.
Declaration (recorded in the public records)	creates obligations which are binding upon the Association and all present and future Owners of property in Two Rivers
Supplemental Declaration (recorded in the public records)	adds property to Two Rivers; <i>may</i> create easements and impose additional obligations or restrictions on such property
Rules and Regulations (Board or Owners may adopt)	govern use of property, activities, and conduct within Two Rivers.
Board Resolutions (Board Adopts)	establish rules, policies and procedures for internal governance and Association activities, regulate operation and use of Common Elements.

b. The Association Documents apply to all Owners and Guests within Two Rivers. Any lease of a Unit shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Association Documents.

c. Any Supplemental Declaration or other recorded covenants applicable to any portion of Two Rivers may contain additional restrictions or provisions that are more restrictive than the provisions of this Declaration and, in such case, the more restrictive covenant shall control.

d. If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

e. Throughout the Association Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Association Documents, the text shall control.

ARTICLE II **DEFINITIONS**

Section 2.1. Definitions. The following words when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

a. **“Act”** means the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101, et seq., as it may be amended from time to time.

b. **“Agencies”** shall mean and collectively refer to the Federal National Mortgage Association (“FNMA”), the Government National Mortgage Association (“GNMA”), the Department of Housing and Urban Development (“HUD”), the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), the Colorado Housing Finance Authority (“CHFA”) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

c. **“Allocated Interests”** means the Association votes assigned to each Lot as set forth in Exhibit D and the Common Expense liability percentage allocated in Section 8.1 and Exhibit D.

d. **“Area of Common Responsibility”** means the Common Elements, together with such other areas, if any, that the Association has or assumes responsibility pursuant to this Declaration, any Supplemental Declaration or other applicable, covenants, contracts, agreements, or easements benefiting the Project but located outside the Property

e. **“Articles”** means the Articles of Incorporation of The Two Rivers Community Association on file with the Colorado Secretary of State, and any amendments which may be made.

f. **“Assessments”** means all of the assessments for Common Expenses levied by the Association against a Lot or its Owner pursuant to this Declaration or the Act.

g. **“Association”** means The Two Rivers Community Association, a Colorado nonprofit corporation, and any successor entity by whatever name, charged with the duties and obligations of administering the Project.

h. “Association Documents” means this Declaration, the Plat, the Articles and the Bylaws, and any procedures, rules, regulations or policies adopted under such documents.

i. “Builder” means any person who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers.

j. “Bylaws” means the Bylaws adopted by the Association as amended from time to time.

k. “City” means the city of Salida, a municipal corporation located in Chaffee County, Colorado.

l. “Common Elements” means all the Property as labeled on the Plat, except the Lots, Units and the Expansion Property, which the Association owns for the common use and enjoyment of the Owners on a non-exclusive basis as provided below. The Common Elements includes the unimproved land surrounding the Lots, the easements benefiting the Project as granted in this Declaration or the Plat, the water, sewer and other utility or communication lines and facilities serving the project which are not owned by any public entity, the trails not dedicated to the public and the private access roads. The term Common Elements shall also include the Limited Common Elements, which are exclusively reserved for use by an Owner or as otherwise provided in this Declaration.

m. “Common Expenses” means:

i. any and all of the Association’s costs, expenses and liabilities including, without limitation, costs, expenses and liabilities incurred for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (B) providing facilities, services and other benefits to Owners and their Guests; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created in the Association Documents, (D) levying, collecting and enforcing the Assessments; (E) regulating and managing the Project; (F) operating the Association; (G) utilities not separately metered and billed directly to Unit Owners;

ii. other expenses declared to be Common Expenses pursuant to the Association Documents or the Act, and expenses agreed upon as Common Expenses by the Association; and

iii. reserves for any such costs, expenses and liability;

n. “Community Standard” means the standard of conduct, maintenance, or other activity generally prevailing at Two Rivers, or the minimum standards established pursuant to the Design Guidelines, whichever is the highest standard. Declarant shall initially establish such standard and it may contain both objective and subjective elements. The Community Standard may evolve as development progresses and as the needs and desires within Two Rivers change. Community Standards may be higher standards than governmental laws and regulations that apply to the Property; however, Two Rivers Owners, residents and guests must also comply

with applicable City, state, federal and other governmental laws and rules in addition to the Community Standards.

COMMUNITY STANDARD <i>The higher of:</i> OR	PREVAILING STANDARD
MINIMUM STANDARDS <i>Design Guidelines</i> <i>Restrictions and Rules</i> <i>Resolutions of Board</i> <i>Example set by Declarant, Board</i>	

o. **“Declarant”** means 2 Rivers, LLC, a Colorado limited liability company and its successors and assigns.

p. **“Declarant Control Period”** means the period of time that Declarant has exclusive power to appoint and remove Directors and Officers subject to the limitations in the Act. The Declarant Control Period begins the date this Declaration is first recorded in the Chaffee County Clerk and Recorder’s office, and will terminate the earlier occurrence of the following:

- i.** sixty (60) days after conveyance of 75% of the Lots that may be created to Owners other than Declarant;
- ii.** two (2) years after Declarant’s last conveyance of a Lot in the ordinary course of business; or
- iii.** two (2) years after Declarant last exercised its right to add new Lots.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove officers and Directors before termination of Declarant Control Period, but, in that event, the Declarant may require for the duration of the Declarant Control Period, that specified Association or Board actions, as described in an instrument executed and recorded in the Chaffee County Clerk and Recorder’s office by the Declarant, be approved by the Declarant before those actions become effective.

q. **“Declaration”** means and refers to this Declaration of Covenants, Conditions, Easements and Restrictions for Two Rivers.

r. **“Design Guidelines”** means the Two Rivers Design Guidelines, which may include review procedures and be adopted pursuant to Article IV.

s. **“Development Rights”** means those rights reserved by the Declarant in Article IX.

t. **“Director”** means a member of the Executive Board.

u. **“Easement”** means the easements shown on the Plat or designated by this Declaration including, without limitation, public right-of-ways, parkways, shared access

easements, trail and river access easement, and easements for inspection and correction, access, drainage, utilities, maintenance and emergencies.

v. **“Eligible Mortgagee”** means those First Mortgagees or insurers or guarantors of First Mortgages who have made written request to the Association for notification of certain matters and actions.

w. **“Executive Board”** means the Association’s governing body elected to perform the Association’s obligations relative to the operation, maintenance, and management of the Property and all improvements on the Property.

x. **“Expansion Property”** means the parcels described in Exhibit B and identified on the Plat as “Expansion Property”, which may be converted into additional Lots, Units, or Common Elements.

y. **“First Mortgage”** means any Deed of Trust or Mortgage which has priority over all other security interests in any Lot.

z. **“First Mortgagee”** means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

aa. **“Guest”** mean an Owner’s family members, tenants, invitees, licensees, employees, contractors or agents.

bb. **“Improvement”** means any construction, structure, equipment, fixture or facilities existing, or to be constructed, on the Property that is include in the Project including, without limitation, homes, buildings, trees, and shrubbery planted by the Owner, the Declarant, or the Association, paving, utility wires, pipes, and light poles.

cc. **“Limited Common Elements”** means portions of the Common Elements allocated by the Declaration, or by operation of C.R.S. § 38-33.3-202(1)(b) or (1)(d), for the exclusive use of one or more Units but fewer than all of the Units.

dd. **“Lot”** refers to a platted parcel depicted on the Plat, which may be independently owned, whether improved or unimproved. Lot is synonymous with “Unit” as used in the Act.

ee. **“Manager”** means a person or entity that the Association may engage to perform certain duties, powers or functions as the Executive Board may authorize from time to time.

ff. **“Member”** means a Person holding a membership in the Association.

gg. **“Mortgage”** means any mortgage, deed of trust or other document which encumbers any Lot or interest therein as security for payment of a debt or obligation.

hh. “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

ii. “Owner” means any record owner including, without limitation the Declarant or a contract vendor, whether one or more persons or entities, of a fee simple title interest to any Lot. Owner does not include a Person having only a security interest or any other interest in a Lot solely as security for an obligation.

jj. “Person” means an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

kk. “Plat” means the Plats for Two Rivers Subdivision, Phase 1 and Phase 2, recorded in the office of the Clerk and Recorder of Chaffee County, Colorado.

ll. “Project” means the planned community known as Two Rivers created by this Declaration, consisting of the Property, the Lots and any other Improvements constructed on the Property as shown on the Plat.

mm. “Property” means the real property described in Exhibit A, together with any additional property subjected to this Declaration in accordance with Article IX.

nn. “PUD” means the Planned Unit Development Plan and Guide for the development of Two Rivers approved by the City, as it may be amended, which applies to include all of the property described in Exhibit A and the Expansion Property described in Exhibit B. Inclusion of property in the PUD shall not obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit B from the PUD bar its later submission to this Declaration as provided in Article IX.

oo. “Salida Code” means all the laws of the City of Salida including without limitation the PUD and City ordinances, together with rules, regulations and other governmental requirements adopted pursuant thereto.

pp. “Special Declarant Rights” means those rights reserved in Article IX for the benefit of the Declarant, including Development Rights.

qq. “Supplemental Declaration” means an instrument recorded pursuant to Article IX which subjects additional property to this Declaration or imposes additional restrictions and obligation on the land described in such instrument.

rr. “Supplemental Plat” means an instrument recorded pursuant to Article IX which depicts additional property subjected to the Declaration.

ss. “Successor Declarant” means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment

or deed recorded in the Chaffee County Clerk and Recorder's office, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

tt. "Unit" means a physical portion of the Project designed for separate ownership or occupancy, the boundaries of which are described in this Declaration or depicted on the Plat. The term shall refer to the land, if any, which is part of the Unit as well as any Improvements thereon. Each dwelling in a multi-dwelling building shall be a separate Unit.

PART TWO - CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, and architecture at Two Rivers are what give the community its identity and make it a place that people want to call "home." Each Owner and resident in upholding such standards can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for the community standards to evolve as Two Rivers changes and grows over time.

ARTICLE III
USE AND CONDUCT

Section 3.1. Framework for Regulations. The Association Documents establish, as part of the general plan of development for Two Rivers, a framework of affirmative and negative covenants, easements, and restrictions governing Two Rivers. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. This Article establishes procedures for modifying and expanding the initial restrictions and rules.

Section 3.2. Rule Making Authority.

a. The Executive Board may adopt and publish rules and regulations governing the use of the Common Elements and governing the personal conduct of the Members and their guests on the Project; the Association may establish penalties, including, without limitation, the imposition of fines, for the violation of such rules and regulations.

b. No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration. In the event of a conflict between the Design Guidelines and the restrictions and rules, the Design Guidelines shall control. In the event any conflict between this Declaration and the Design Guidelines, this Declaration will control.

Section 3.3 Owners' Acknowledgment and Notice to Purchasers. All Owners are given notice that use of their Lots and the Common Elements is limited by the Association Documents as amended, expanded, and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of their Lot can be affected by this provision and that the Association Documents may change from

time to time. All Lot purchasers are on notice that the Association may have adopted changes. Copies of the current Association Documents may be obtained from the Association.

Section 3.4. Rights of Owners. The Executive Board shall not adopt any rule or regulation in violation of the following provisions:

a. Equal Treatment. Similarly situated Owners and Guests shall be treated similarly.

b. Speech. An Owners right to display political signs and symbols in or on their Lot of the kinds normally displayed in Lots located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and Guests in conformance with the Act.

c. Religious and Holiday Displays. An Owners right to display religious and holiday signs, symbols, and decorations on Lots of the kinds normally displayed in homes located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage or disturbance to other Owners and Guests.

d. Activities within Units. No rule shall interfere with the activities carried on within a Unit, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of Owners or Guests, that generate excessive noise, odors or traffic, that create unsightly conditions visible outside the Unit, or that create an unreasonable source of annoyance.

e. Reasonable Rights to Develop. No rule shall impede the Declarant's right to develop in accordance with the provisions of this Declaration.

f. Abridging Existing Rights. If any rule would otherwise require Owners or Guests to dispose of personal property that they owned at the time they acquired their interest in the Lot, and such ownership complied with all rules and regulations in force at that time, the rule shall not apply to any such Owners or Guests without their written consent. However, all subsequent Owners or Guests shall comply with such rule.

g. Allocation of Burdens and Benefit. No rule shall alter the allocation of financial burdens among the various Lots. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Elements, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Elements, or violate the Association Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

Section 3.5. Initial Restrictions and Rules. The following restrictions shall apply to the Property and the Project:

a. Residential Use. Except for the Declarant's activities permitted elsewhere in this Declaration, the use of each Unit is restricted to residential purposes as defined in the Salida Code for associated underlying zone districts. No industry, business, trade, or commercial activities (other than home professional pursuits without employees, or nonresidential storage, mail, or other nonresidential use) shall be conducted, maintained, or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel, or motel purposes. Any activity that causes excessive vehicular traffic, includes material processing, finishing or parts assembly, is prohibited.

b. Pets. Raising, breeding, or keeping animals, livestock, or poultry of any kind is prohibited, except as permitted by the Salida Code. Additionally, Owners may keep a reasonable number of dogs, cats, or other usual and common domestic pets in their Unit. However, pets that make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to, other Owners or Guests may be removed from the Property. Pets must be voice or leash controlled at all times, and shall not be permitted to roam free or run loose on the Common Elements. Pet owners shall be responsible for cleaning up after their pets.

c. Subdivision. A Lot may be subdivided into two or more Lots only in conformance with the PUD and Salida Code.

d. Leases. The term "lease," shall include any agreement for the lease or rental of a Unit and shall specifically include, without limitation, term or month-to-month rental. Owners shall have the right to lease their Unit under the following conditions:

i. All leases shall be in writing.

ii. All leases shall provide that the tenant's occupancy of the Unit is subject to the Association Documents, and that the tenant's failure to comply with the Association Documents shall be a default of the lease, which may be enforced by the Executive Board, the Owner, or both.

iii. The Association may require any Owner who leases his Lot or Unit to forward a copy of the lease to the Association within ten (10) days after the execution by Owner and the tenant.

iv. If a tenant fails to comply with any Association Document, the Owner and the tenant shall be jointly and severally responsible and liable to the Association; at the request of the Association, the Owner shall, at the Owner's sole cost and expense, terminate the Lease and commence eviction proceedings to evict the tenant.

v. Short-term rental activity for terms of 30 days or less is permitted on Lots 1 through 27 as noted in the Plat or PUD. Such activity is permitted on any other Lot subject to limitations set forth in the Salida Code. Minimum lease terms on other Lots may be imposed by rule adopted by the Executive Board with consent of 67% of the affected Owners.

e. Parking. Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, abandoned or inoperable vehicles in places other than enclosed garages, or within the exterior parking spaces depicted on a Lot's approved site plan, is prohibited. An "abandoned or inoperable vehicle" means any vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two (2) weeks or longer. Notwithstanding the forgoing, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such time periods as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Elements. Unlicensed motor vehicles shall not be operated on the Common Elements. The definition of unlicensed motor vehicles shall include, but is not limited to, go-carts, mini-bikes, unlicensed motor bikes, motorized scooters, snow mobiles and all-terrain vehicles.

f. Timeshare Restriction. No Owner shall offer or sell any interest in their Lot under a "timesharing" or "interval ownership" plan, or any similar plan.

g. Compliance with Laws. Each Owner shall comply with all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property, and the Association may enforce same as if they were contained in the Association Documents. Further, no Owner shall dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

h. Nuisances. Any use, activity, or practice, which is the source of disturbance to or unreasonably interferes with the peaceful enjoyment or possession of a Lot or any portion of the Common Elements or the Project, is prohibited as a nuisance. Activities prohibited under this subsection include, without limitation, the following: noxious, offensive, dangerous, or unsafe activity that is or may cause an unreasonable embarrassment, disturbance, or annoyance to other Owners or Guests; activity that causes noxious or offensive sounds or odors, including those caused by pets, to be emitted.

i. Alterations or Modifications. Owners are prohibited from making structural alterations to any exterior Common Elements. No structural alterations or modifications to any Unit or any Common Element shall be made or caused to be made by any Owner without the Association's prior written approval.

ARTICLE IV **ARCHITECTURE AND LANDSCAPING, DESIGN REVIEW**

Section 4.1. General. No structure or thing shall be placed, erected, or installed upon any Lot and no Improvements or other work including, without limitation staking, clearing, excavation, grading and other site work, exterior alterations of existing Improvements shall occur, except in compliance with this Article and the Design Guidelines, or as otherwise permitted by this Declaration.

a. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of enclosed porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

b. All dwellings constructed on any portion of the Property shall be designed by and built in accordance with the Salida Code, and as approved by the Chaffee County Building Department. All structures requiring a building permit shall have a foundation designed by a Colorado licensed engineer..

c. This Article shall not apply to Declarant's activities or the Associations activities during the Declarant Control Period.

Section 4.2. Declarant's Design Review. Each Owner, by virtue of their ownership of any interest in any portion of the Property, acknowledges that, as the developer of Two Rivers and as an Owner of portions of the Property, Declarant has a substantial interest in ensuring that the improvements within Two Rivers enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until the Declarant, or its designee(s), has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's sole discretion.

a. Declarant shall be acting solely in Declarant's interest and shall owe no duty to any other Person in reviewing and acting upon any request for approval. Declarant's rights under this Article shall continue so long as Declarant may exercise Development Rights or Special Declarant Rights.

b. Declarant may delegate all or a portion of the rights reserved in this Article to a Design Review Committee ("DRC"), which may consist of Declarant, Persons appointed by the Executive Board, or Persons appointed by Declarant. Any such delegation shall be in writing, specify the scope of responsibilities delegated, and shall be subject to Declarant's right to: revoke the delegation; and Declarant's right to veto any decision that Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason.

Section 4.3. Design Review Committee. Upon Declarant's delegation, or the expiration or termination of Declarant's rights under this Article, the Association, acting through the DRC, shall assume jurisdiction over design review matters. The DRC, when appointed by the Board, shall consist of at least three (3), but not more than five (5), Persons who may or may not be Members. Exercise of the Board appointed DRC's authority shall require the affirmative vote of a majority of its members. The Association shall have no jurisdiction or design review matters until Declarant delegation.

Section 4.4. Fees; Assistance. The DRC may establish and charge reasonable fees for application review and may require such fees to be paid in full prior to review. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers,

or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget.

Section 4.5. Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Two Rivers as well as specific provisions which vary from Lot to Lot. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matter of particular concern to the DRC in considering applications.

a. Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of or has a right to expand Two Rivers pursuant to this Declaration.

b. Any Design Guideline amendments shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of Design Guideline amendments, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

c. The DRC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction with Two Rivers. Such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Section 4.6. Procedures. Except for Declarant's activities during the Declarant Control Period, or as otherwise specifically provided in the Design Guidelines, no activities shall commence on the Property until an application for approval has been submitted to and approved by the DRC and in accordance with Salida Code. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction as applicable. The Design Guidelines and the DRC may require the submission of such additional information as may be reasonably necessary to consider any application.

a. In reviewing each application, the DRC may consider any factors that it determines are relevant including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and opinions may vary as to the desirability, or attractiveness, of particular Improvements. The DRC shall have the sole discretion to make determinations on matters of aesthetic judgment, which determinations shall not be subject to review if made in good faith and in accordance with the procedures set forth herein.

b. The DRC shall make a determination on each application within thirty (30) days after receipt of the completed application and all required information. The DRC may:

approve the application with or without conditions; approve a portion of the application and disapprove other portions; or disapprove the application.

c. Until Declarant's rights under this Article expire or terminate, the DRC shall give Declarant written notice within three (3) business days after the DRC has approved an application. The notice shall include a copy of the application and any additional information Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action by written notice to the DRC.

d. The DRC shall give the applicant written notice of the final determination within five (5) days thereafter or, with respect to any DRC determination subject to Declarant's veto right, within 5 days after the earlier of: receipt of Declarant's notice of veto or waiver thereof; or expiration of the 10 day period for exercise of Declarant's veto. If the application is disapproved, the DRC shall specify the reasons for any objections, or offer suggestions for curing any objections.

e. An application shall be deemed to have been approved, subject to Declarant's veto right, if the DRC fails to timely respond. However, no approval shall be inconsistent with the Design Guidelines without a written variance pursuant Section 4.7 below.

f. Approval of any application shall automatically expire one year after the date of approval if the approved work does not commence within that time-period. In such circumstances, the applicant must resubmit its application before commencing any activities, unless the DRC grants a written extension. Once approved work commences, it shall be diligently pursued to completion. All work shall be completed within sixteen (16) months of commencement unless otherwise specified in the DRC's notice of approval, or the DRC grants a written extension. If approved work is not completed within the required time, it shall be considered nonconforming and may be subject to an enforcement action by the Association, Declarant or an aggrieved Owner.

Section 4.7. Variances. The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 4.8. No Waiver, Limitation of Liability.

a. Each Owner acknowledges that the Persons on the DRC will change from time to time and that aesthetic opinions, and interpretation and application of the Design Guidelines, may vary accordingly. Additionally, each Owner acknowledges that identification of objectionable features may not be possible until work is completed, and although it may be unreasonable to require changes to such work, the DRC may refuse to approve similar proposals in

the future. Approval of any application shall not constitute a waiver of the right to withhold approval of applications subsequently or additionally submitted.

b. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Two Rivers; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the DRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

c. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in Two Rivers; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each as provided in the Association Documents.

ARTICLE V **MAINTENANCE AND REPAIR**

Section 5.1. Maintenance of Units. Each Owner shall maintain their Lot or Unit and all landscaping and Improvements on the Lot in a manner consistent with the Association Documents, the Community Standard, and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Section 5.2. Maintenance of Common Elements. Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the Association's property in good order and condition and shall otherwise manage and operate the Common Elements and such property as it deems necessary or appropriate. In this regard the Association may:

a. The Association shall be responsible for maintaining and irrigating the landscaping on the Common Elements.

b. The Association may assume maintenance responsibility for any portion of the Property, in addition to that designated by any Supplemental Declaration, either by agreement with the Owner or because, in the Board's opinion, the level and quality of service then being provided is not consistent with the Community Standard. All costs of maintenance pursuant to the paragraph shall be assessed as a Common Expense only against the Units to which the services are

provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Section 5.3. Responsibility for Repair and Replacement. Unless otherwise specifically provided in the Association Documents or in other instruments creating and assigning maintenance responsibility, maintenance responsibility shall include responsibility for repair and replacement, as necessary to maintain the Property to a level consistent with Community Standard.

a. By virtue of taking title to a Lot or Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable Improvements within the Lot, less a reasonable deductible, unless the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a specific Assessment against the benefited Unit and the Owner.

b. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on the Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community Standard. The Owner shall pay any costs not covered by insurance proceeds.

PART THREE - COMMUNITY GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as the mechanism by which each Owner is able to participate in the governance and administration of Two Rivers. While many powers and responsibilities are vested in the Executive Board in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership – the Owners of property in Two Rivers.

ARTICLE VI **THE ASSOCIATION AND ITS MEMBERS**

Section 6.1. The Association. The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Association Documents. The Association shall perform its functions in accordance with the Association Documents and Colorado law.

Section 6.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot, which shall be appurtenant to and may not be separated from Lot ownership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

Section 6.3. Voting. The Association shall have two (2) membership classes: Class “A”, and Class “B”.

a. Class “A”. Class “A” Members shall be all of the Owners except the Class “B” Member, if any. Class “A” Members shall have one vote for each Unit that they own, except that there shall be only one vote per Unit. In any situation where a Member is entitled personally to exercise the vote for their Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary in writing prior to the vote being taken. Absent such advice, the Lot’s vote shall be suspended if more than one Person seeks to exercise it.

b. Class “B”. The sole Class “B” member shall be the Declarant. The Class “B” Member may appoint Directors during the Declarant Control Period as specified in the Bylaws. Additional Declarant rights are specified in relevant sections of the Association Documents. After termination of the Declarant Control Period, Class “B” Member shall have the right to disapprove actions of the Association and the Board. The Class “B” membership shall terminate upon the earlier of:

- i.** two years after expiration of the Declarant Control Period; or
- ii.** when the Declarant voluntarily terminates the Class “B” membership in a recorded instrument.
- iii.** Upon termination of the Class “B” membership, Declarant shall be a Class “A” Member, and entitled to vote accordingly, depending on the Lots Declarant owns.

In recognition of the different character and intended use of a portion of the Property, Declarant may, by Supplemental Declaration, create additional membership classes for the Lot Owners within any property made subject to this Declaration. These classes shall have such rights, privileges, and obligations as specified in such Supplemental Declaration. Neither recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Declaration, and no consent or approval of any person shall be required except as stated in this paragraph. After expiration of Declarant’s right to expand, the Board shall have the right to record or amend such Supplemental Declaration upon the vote of a majority of the Directors and approval of Owners representing a majority of the total Class “A” votes.

ARTICLE VII **ASSOCIATION POWERS AND RESPONSIBILITIES**

Section 7.1. Acceptance and Control of Association Property.

a. The Association may acquire, hold, lease, operate, and dispose of tangible and intangible personal property and real property. It may enter into leases, licenses, or operating agreements for portions of the Common Elements, for such consideration or no consideration, as the Board deems appropriate, permitting use of such Common Elements by community

organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of the Owners and Guests.

b. The Association shall be responsible for management, operation, and control of the Common Elements, subject to any covenants and restrictions set forth in the instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Elements as it deems appropriate.

Section 7.2. Maintenance of Area of Common Responsibility.

a. The Association shall maintain, in accordance with the Community Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

i. all portions of Improvements and structures situated on the Common Elements;

ii. landscaping within public rights-of-way and the parkways within the Property, upon issuance of a license pursuant to the Salida Code;

iii. such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, a covenant to share costs, easement agreement benefiting the Association, or any contract or agreement for maintenance thereof entered into by the Association;

iv. all ponds, streams, rivers, or wetlands located within the Property, which serve as part of the storm water drainage system for the Property, including improvements and equipment installed therein or used in connection therewith;

v. any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

b. The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Executive Board determines that such maintenance is necessary or desirable to maintain the Community Standard.

c. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

d. The costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area

of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Limited Common Elements shall be a Common Expenses which may be assessed to the Units to which the Limited Common Elements are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Section 7.3. River Maintenance. The Association shall be responsible for maintenance and stabilization of fish habitat improvements made to the South Arkansas River in accordance with the Community Standard and applicable environmental requirements. The Association shall have an easement over and across the portions of the Lots that are adjacent to the north bank of the South Arkansas River for access necessary to perform its obligation.

Section 7.4. Insurance.

a. Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

i. Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Elements, and within the Area of Common Responsibility if the Association has assumed responsibility, in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

ii. Commercial general liability insurance on the Common Elements, and within the Area of Common Responsibility if the Association has assumed responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall be a minimum of \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

iii. Employers liability insurance, if and to the extent required by law;

iv. Directors and officers liability coverage;

v. fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserve on hand.

Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation;

vi. Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

b. Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons familiar with insurable replacement costs in Chaffee County, Colorado. All Association policies shall provide for a certificate of insurance to be furnished to the Association, and to each Member insured upon request. The policies may contain a reasonable deductible, which amount shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section. In the event of an insured loss, the deductible may be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. Alternatively, the Executive Board may treat the expense as an assessment against an Owner whose Unit is specifically affected by the damage or whose negligence or willful act resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible as an Assessment. All insurance coverage obtained pursuant to this Section shall be subject to the following provisions and limitations:

i. The named insured under any such policies shall include Declarant, until all the Units have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the Association's authorized representative (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee" and such Insurance Trustee will be recognized by an insurer providing insurance pursuant to this Article) who shall have exclusive authority to negotiate losses and receive payments under such policies, and the "loss payable" clause should designate the Association or the Insurance Trustee, if any, who will act as trustee for each Owner and the holder of each Unit's Mortgage.

ii. Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements or Association membership.

iii. The insurance coverage obtained and maintained pursuant to this Article shall not be brought into contribution with insurance purchased by the Owners or their Mortgagees.

iv. The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner or their Guest when such act or neglect is not within the Association's control, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control.

v. The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled nor may the insurer refuse to renew (including

cancellation for non-payment of premium) without at least thirty (30) days' written notice to the Association, each Owner and any First Mortgagee listed as an insured in the policies.

vi. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Executive Board, the Association, the Manager, and any Owner or their respective agents, employees, or tenants; and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

c. Restoring Damaged Improvements. In the event of damage to or destruction of Common Elements or other property which the Association is obligated to insure, the Board, or its authorized agent, shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

i. Damaged improvements on the Common Elements shall be repaired or reconstructed unless Owners representing at least 67% of the total votes, and the Declarant, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Elements shall be repaired or reconstructed.

ii. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Standard.

iii. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagees of any affected Unit.

iv. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under this Section.

d. Insurance Obtained by Owners. Each Owner shall obtain physical damage coverage on special form basis and liability insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot or Unit, personal property and personal liability. If an Owner engages a contractor to perform any work on the Owner's Unit or Limited Common Elements that requires a building permit, the Owner will require the contractor to provide the Association with evidence that a commercial general liability policy is in place covering contractor's work and

naming the Association as an additional insured. In addition, an Owner may obtain such other and additional insurance coverage as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that such insurance coverage shall not operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any Board maintained policy or otherwise affect any Association obtained insurance coverage or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant own any Unit. No Owner shall obtain separate insurance policies on the Common Elements.

Section 7.5 Compliance and Enforcement.

a. Every Owner and Guest shall comply with the Association Documents. The Board may impose sanctions for violation of the Association Documents after notice and a hearing in accordance with procedures adopted by the Board. Such sanctions may include, without limitation:

i. imposing reasonable monetary fines which shall constitute a lien upon the violating Owner's Unit;

ii. suspending an Owner's right to vote, or use any recreational facilities within the Common Elements;

iii. suspending any Association provided services to an Owner or their Unit;

iv. exercising self-help or taking action to abate any violation of the Association Documents in a non-emergency situation; and

v. levying Specific Assessments to cover the Association's costs remedy or prevent violation of the Association Documents.

b. In addition, the Board may take the following enforcement procedures to ensure compliance with the Association Documents without compliance with any Board adopted procedures:

i. exercise self-help in any emergency situation (specifically including, but not limited to, towing vehicles that are in violation of parking rules and regulations); or

ii. bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

c. In addition to any other enforcement rights, if an Owner fails to perform their maintenance responsibility, the Association may perform such maintenance responsibilities and assess all the Association's costs and expenses against the Unit and the Owner as a Specific

Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

d. All remedies set forth in the Association Documents shall be cumulative of any remedies available at law or in equity. If the Association prevails in any action to enforce the Association Documents, it shall be entitled to recover its costs and reasonable attorneys' fees incurred in such action.

e. The Board, in its discretion, shall decide whether to pursue an enforcement action in any particular case, except that the Board shall not be arbitrary or capricious in making its decision. Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 7.6. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Association Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, the Board may exercise all the Association's rights and powers without a vote of the membership. Without limiting the generality of the foregoing, the Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, Association Document enforcement, or any other civil claim or action. However, the Association Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members. In exercising the Association's rights and powers, making decisions on its behalf, and conducting the Association's affairs, Directors shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

Section 7.7. Indemnification of Officers, Directors and Others. Subject to Colorado law, the Association shall indemnify every officer, Director, and committee member against all damages and expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Executive Board) to which they may be a party by reason of being or having been an officer, Director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

a. The officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or Directors may also be Members).

b. The Association shall indemnify and forever hold each such officer, Director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled.

The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 7.8. Access Control. Declarant, its successors or assigns shall have the exclusive right and authority, but not the obligation, to control access to the Property or any portion thereof until acceptance of dedicated roads by the City. Access may be controlled by such means as the Declarant, in its sole discretion, deems reasonable and appropriate; however emergency access by police, fire and as required by the Salida Code or applicable Laws shall not be denied. Declarant may assign such right and authority to the Association. This authority shall include, without limitation, the right to: construct, install, operate, and staff entrance gates; to require identification for admission to the Property; to videotape or otherwise record and document all Persons and vehicles entering the Property; to screen, or require registration of vehicles, guests, and others entering the Property; and to deny entry to the Property to Persons other than Owners and residents.

Section 7.9 Safety and Security. Each Unit Owner and their Guests shall be responsible for their own personal safety and the security of their property in Two Rivers. The Association may, but shall not be obligated to, maintain or support certain activities within Two Rivers designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within Two Rivers, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Two Rivers, cannot be compromised or circumvented nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its Guests that the Association, its Board and Committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Two Rivers assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

Section 7.10. Provision of Services. The Association may provide services and facilities for the Members and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Association's budget as a Common Expense and assessed as part of the Base Assessment if provided to all Units, or the costs of such services may be recovered through Specific Assessments on the benefitted Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

a. The Association may also provide services in conformance with the PUD and Salida Code at the request and option of any Owner. The services may include rental management services, housekeeping, home watch, landscape maintenance, car care, grocery

shopping and delivery, and other personal, home and delivery services. The Association shall charge use or service fees for any services provided at the option of an Owner.

b. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the Association Documents otherwise require provision of such services. Non-use of services provided to all Unit Owners as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

Section 7.11. Relationships with Other Property. The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services, or a high level of Common Elements maintenance.

ARTICLE VIII
ASSOCIATION FINANCES

Section 8.1. Budgeting and Allocating Common Expenses. The Executive Board shall adopt a budget with estimated Common Expenses sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments levied against the Lots and the amount to be generated through the levy of Base Assessments and Special Assessments, as authorized in that section entitled Authority to Assess Owners; Time of Payment below.

<p><u>ASSOCIATION FUNDS:</u> General Operating Fund Reserve Fund for Repair and Replacement of Capital Items</p> <p style="text-align:center"><u>PRIMARY SOURCES OF INCOME:</u> Base Assessments Special Assessments Specific Assessments Declarant Subsidy (if any) One-time Contributions to Working Capital</p> <p style="text-align:center"><u>SECONDARY SOURCES OF INCOME</u> Facilities Rental Monetary Penalties Interest on Reserves Delinquent Assessments Late Charges</p>

a. Within ninety (90) days after adoption of any proposed budget, the Executive Board will mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and will set a date for a meeting of the Owners to consider ratification of the budget. The budget proposed by the Board will be deemed approved unless at that meeting a

majority of all Owners vote to veto the budget. If the proposed budget is vetoed, the Board's last periodic budget, not vetoed by the Owners, must be continued until such time as a subsequent budget proposed by the Board is not vetoed.

b. Common Expense Assessments that generally benefit all Units will be assessed equally to all Units, subject to the following exceptions:

i. Any Common Expense which is separately metered or assessed to the Units by third parties will be assessed to the benefited Unit;

ii. Any Common Expense associated with Limited Common Element maintenance, repair or replacement will be assessed against the Unit or Units to which that Limited Common Element is allocated, equally or on such other equitable basis as the Executive Board shall determine;

iii. Any Common Expense benefitting fewer than all of the Lots will be assessed exclusively against the Lots benefitted, equally or on such other equitable basis as the Executive Board shall determine;

iv. Insurance costs shall be assessed in proportion to risk, and utility costs shall be assessed in proportion to usage; and

v. The Executive Board may assess any Common Expense caused by the an Owner's misconduct exclusively against such Owner's Unit.

vi. If any Lots are added to or withdrawn from the Project, the shares of Common Expenses for all Lots within the Project after such addition or withdrawal shall be recalculated in accordance with the formula set forth in Exhibit D.

vii. Until the Association levies an Assessment, Declarant shall pay all Common Expenses.

c. Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

Section 8.2. Working Capital Account. The Association or Declarant shall require each buyer of a Lot to make a non-refundable payment to the Association in an amount equal to three times the monthly installment of the Base Assessment for the Lot, which sum the Association shall hold, without interest, to meet unforeseen expenditures, acquire additional services or equipment for the Owners or as a maintenance reserve. A Working Capital Account contribution shall be collected and transferred to the Association at the time of closing of the sale, or re-sale, of

each Lot, and shall be maintained for the Association's use and benefit. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Lot, an Owner shall not be entitled to a credit from the transferee for any unused portion of the Working Capital Account. Declarant may not use any of the Working Capital Account to defray any of its expenses, construction costs or to make up budget deficits.

Section 8.3. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses or against the benefitted Units if such Special Assessment is for Common Expense benefitting less than all of the Units. Except as otherwise specifically provided in the Declaration, any Special Assessment shall require the approval of Owners representing more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and the approval of the Declarant, if occurring prior to the expiration of the Declaration Control Period. Special Assessments shall be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 8.4. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

a. to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

b. to cover costs incurred in bringing the Lot into compliance with the Association Documents, or costs incurred as a consequence of an Owners' or a Guests' conduct; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying an Specific Assessment under this subsection (b).

c. The Association may also levy a Specific Assessments against less than all of the Units to reimburse the Association for costs incurred in bringing such Units into compliance with the provisions of the Association Documents, provided the Board gives prior written notice to the Unit Owners, and such Owners have opportunity to be heard before levying any such assessment.

Section 8.5. Authority to Assess Owners; Time of Payment. The Association is authorized to levy assessments as provided for in this Article and elsewhere in the Association Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the month in which Declarant conveys the Unit to an Owner, or the month in which the Unit is issued a Certificate of Occupancy, whichever occurs first. Declarant will pay all Common Expenses until Periodic Assessments are levied on a Unit. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for

Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

Section 8.6. Obligation for Assessments. Each Owner, by accepting a deed or entering into a recorded contract for sale for any portion of Two Rivers, is deemed to covenant and agree to pay all assessments authorized in the Association Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum or such rate as the Board may establish, subject to the limitations of Colorado law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

a. The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

b. No Owner may exempt himself from liability for assessments by non-use of Common Elements, abandonment of their Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

c. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Section 8.7. Assessment Lien. Any Assessment installment, whether pertaining to any Base, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association may take any action authorized in the Association Documents or applicable law.

Assessments chargeable to any Lot shall constitute a lien on such Lot, including any Improvements on the Lot. To evidence the lien created under this Section, the Association may, but is not required to record a written lien statement. Such Assessment lien shall attach from the Assessment's due date. The Association may foreclose the Assessment lien by instituting

foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under Colorado law. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Section 8.8. Subordination of Lien. The Assessment lien provided for in this Declaration shall be subordinate to (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) liens for all sums unpaid for a First Mortgage of record, recorded before the assessment to be enforced became delinquent, except that the Association claims the priority for 6 months assessment lien as granted in the Act. The Assessment lien shall be superior to and prior to any homestead exemption provided now or in the future by applicable law. Transfer of a Unit shall not affect the Association's lien except that transfer of a Unit pursuant to foreclosure of any First Mortgage, shall only extinguish the Association's liens as provided in the Act. The Executive Board may reallocate and assess the extinguished amount. No transfer shall relieve the grantee of a Unit from liability for, or the Unit from any Assessment lien made after the transfer.

Section 8.9 Transfer of Unit. Any Owner who sells or otherwise transfers title to their Unit shall give the Board written notice of the purchaser or transferee's name, address, the date of such title transfer, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all Unit Owner obligations, including assessment obligations, until the date the Board receives such notice, notwithstanding the transfer of title.

PART FOUR - COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Two Rivers and to accommodate changes in the master plan which inevitably occur as a community the size of Two Rivers grows and matures.

ARTICLE IX
EXPANSION OF THE COMMUNITY

Section 9.1. Expansion Rights. Declarant expressly reserves the right to use all or any part of the Expansion Property to develop additional Units, Common Elements and Limited Common Elements. Declarant may exercise such rights on all or any portion of the Expansion Property in whatever order of development Declarant, in its sole discretion, determines. The existing Owners or Mortgagees' consent is not required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

a. Declarant makes no assurances as to the boundaries of the portions of the Expansion Property that will be added at any time or the order that such portions will be added.

Furthermore, Declarant has no obligation to subject all or any portion of the Expansion Property to the provisions of this Declaration.

b. Exercise of this Development Right with respect to any portion of the Expansion Property shall not obligate the Declarant to exercise such Development Right in any other portion of the Expansion Property. Any portion of the Expansion Property that is not subjected to this Declaration may be developed as Declarant or any subsequent owner of such portions may determine.

c. The addition of any Expansion Property to the Project shall be achieved by recording with the Chaffee County Clerk and Recorder a Supplemental Declaration, or Supplemental Plat containing a legal description of the real estate to be added to the Project and such other terms and provisions as Declarant may prescribe.

Section 9.2. Reservation of Withdrawal Rights. Declarant reserves the right to withdraw all or any part of the Expansion Property from the Project and the provisions of this Declaration, and the right to withdraw Declarant owned Lots from the Project and the provisions of this Declaration. If property is withdrawn from the Property (“Withdrawn Property”):

a. Owners of real estate within the Property or the Withdrawn Property will have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Property and Withdrawn Property.

b. Declarant will prepare and record in the Chaffee County Clerk and Recorder’s office whatever documents are necessary to evidence such easements and will amend the Plat to include reference to the recorded easement(s). Declarant’s preparation and recordation of an easement pursuant to this Section will conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

Section 9.3. Reservation of Additional Development Rights. In addition to any rights reserved elsewhere in this Declaration, Declarant reserves the following Development Rights:

a. The right to subdivide any portion of the Property or the Expansion Property to develop additional Units, Common Elements, and Limited Common Elements.

b. The right to subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If someone other than Declarant owns the property, then the consent of the owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

c. The right to enlarge or reduce the size of the Lots; the right to relocate boundaries between adjoining or otherwise contiguous Lots, and the right to complete or make Improvements as such rights may be approved by the governmental authorities having jurisdiction over the Project.

d. The right to incorporate into the Property additional real estate that is not part of the Expansion Property, and to add additional real estate to the Expansion Property, subject to limitations in the Act.

Section 9.4. Exercise of Development Rights. Declarant shall exercise its Development Rights by recording with the Chaffee County Clerk and Recorder a Supplemental Declaration, Supplemental Plat, or any other Declaration or Plat amendments that may be appropriate. Such documents shall include, without limitation, the information required to properly exercise the Development Rights reserved in this Article, and any other provisions or information permitted or required under the Act.

Section 9.5. Interpretation. Recording of Declaration and Plat amendments or supplements in the Chaffee County Clerk and Recorder's office will automatically:

a. Vest in each existing Owner any additional rights or interest appurtenant to their Lot; and

b. Vest in each existing Mortgagee a perfected security interest in the additional rights or interest appurtenant to the encumbered Lot.

c. Amend the Allocated Interests set forth in this Declaration as necessary to allocate one vote to each Lot, and to allocate Common Expense so that all Lots are liable for an equal share.

d. Apply the definitions used in this Declaration to the Property, or the Expansion Property, as either may be expanded or contracted. All Lot conveyances after such amendment or supplement will be effective to transfer rights in the Common Elements and Limited Common Elements as improved, whether or not reference is made to any Declaration or Plat amendment or supplement. Reference to the Declaration and Plat in any instrument will include all Declaration and Plat amendments or supplements without specific reference thereto.

Section 9.6. Special Declarant Rights. Declarant reserves the right to perform the acts and exercise the following Special Declarant Rights:

a. Completion of Improvements. The right to complete improvements indicated on the Plat.

b. Exercise of Development Rights. The right to exercise any Development Right reserved in this Article. The fact that Declarant may exercise one or more Development

Rights or Special Declarant Rights on one portion of the Property will not operate to require Declarant to exercise any such right with respect to any other portion of the Property.

c. Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the Project and model homes on Declarant owned Lots, whether within the Property or the Expansion Property, but subject to any requirements imposed by the City. The offices, signs, and model homes will be of sizes and styles determined by Declarant. At all times, the offices, furnishings, model homes, and signs will remain the Declarant's property and may be removed from the Property by Declarant at any time.

d. Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements on the Property or the Expansion Property which may be added to the Project.

e. Association Creation, Merger or Consolidation. The right to make the Property or the Expansion Property subject to one or more common interest communities, the right to annex any such common interest community into the Association, and the right to merge or consolidate the Project with another project of the same form of ownership.

f. Control of Officers and Directors. The right to appoint or remove any Officer or any Director during the Declarant Control Period.

g. Control of Construction, Design Review. The right to control any construction, design review, or aesthetic standards committee or process.

h. Amendment of Association Documents. The right to amend any Association Document in connection with the exercise of any Development Rights or Special Declarant Rights.

Section 9.7. Additional Rights Reserved to Declarant.

a. Right to Approve Additional Covenants. So long as Declarant may exercise a Development Right or Special Declarant Right, no person shall record any covenants, restrictions, or similar instrument affecting any portion of Two Rivers without Declarant's written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

b. Right to Approve Changes in Standards. No amendment to or modification of any restrictions and rules, or Design Guidelines, shall be effective without Declarant's written approval so long as Declarant is capable of exercising a Development Right or Special Declarant Right.

c. Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store

materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of Improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which prohibits the Owners' occupancy, use, or access to their Lots.

d. Exclusive Rights to Use Name of Development. No Person shall use the name "Two Rivers" or any derivative of such name or logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Two Rivers" in printed or promotional matter where such term is used solely to specify that particular property is located with Two Rivers and the Association shall be entitled to use the words "Two Rivers" in its name.

e. Easement to Inspect and Right to Correct. Declarant reserves for itself and its designee the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a perpetual nonexclusive access easement through the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Unit shall be only after reasonable notice to the Owner with the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

f. Right to Notice of Design or Construction Claims. No person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Project in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner to discuss the Owner's concerns and conduct their own inspection.

Section 9.8. Transfer and Termination of Declarant Rights.

a. Transfer. The rights created or reserved under this Article for Declarant's benefit may be transferred to any person by an instrument describing the rights transferred, signed by the transferor Declarant and the transferee, and recorded in Chaffee County. These rights are appurtenant to, benefit, and burden all of the Property, and a Successor Declarant may exercise such Development Rights to the same extent as the Declarant, subject to any limitations imposed by the Declarant, this Declaration or applicable law.

b. Termination. The rights created or reserved under this Article for Declarant's benefit shall terminate thirty (30) years after the recording of this Declaration, unless such rights are: (i) earlier terminated by recording of Declarant's written relinquishment of such rights; or (ii) extended as allowed by law.

PART FIVE - PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.

ARTICLE X
EASEMENTS

Section 10.1. Owner’s Easement of Enjoyment. Every Owner has an easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Unit, subject to the provisions contained herein.

Section 10.2. Easement of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Elements and between adjacent Lots or any Lot, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of the Person claiming the benefit of such easement.

Section 10.3. Utility Easements.

a. Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit A or B of this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Two Rivers (but not through a structure) to the extent reasonably necessary for the purpose of: installing utilities and infrastructure to serve Two Rivers, cable and other systems for sending and receiving data, or other electronic signals, security and similar systems walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public right-of-way or easements reserved for such purpose on recorded plats; inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in this Section; and access to read utility meters.

b. Specific Easements. Declarant reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits A and B. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

c. Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on a Lot, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Section 10.4. Easements to Serve Expansion Property. Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Elements for the purpose of enjoyment, use, access, and development of the property described in Exhibit B, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Elements as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion benefiting from such easement is not made subject to this Declaration, Declarant, its successors and assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance with the Association provides to or along any roadway providing access to such Property.

Section 10.5. General Maintenance and Emergency Easement. An easement is hereby reserved to Declarant, and granted to the Association, any Director or the Manager, and their respective officers, agents, employees, and assigns, upon, 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 pursuant to the Association Documents, including the right to enter upon any Lot.

Section 10.6. Easement for Access. Declarant reserves for itself, its successors, assigns, and designees, a perpetual easement over the roads, trails, and walkways within the Property for access by employees, independent contractors, and accompanied guests of Declarant in connection with real estate sales activities within the Property.

Section 10.7. Recorded Easements. The Property is subject to additional existing recorded easements as listed in Exhibit C.

Section 10.8. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property within the Project, including Lots, and a perpetual nonexclusive easement of access through the Project to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Lot shall be only after reasonable notice to the Owner and with the Owner's consent. The person exercising

this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

ARTICLE XI
PARTY WALLS AND OTHER SHARED STRUCTURES

Section 11.1. General. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lot that serves, or separates, any two adjoining Units shall constitute a party wall structure. Any dispute arising concerning a party wall structure shall be subject to the dispute resolution provisions set forth in this Declaration.

Section 11.2. Maintenance; Damage and Destruction. Owners that make use of a party wall structure shall equally share the cost of reasonable repairs and maintenance of such structure.

a. If a party wall structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

b. The right of any Owner to contribution from the other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Section 11.3. Shared Access Easements. As depicted on the Plat, certain Lots have been designed with shared access easements for common driveways benefitting two or more Lots. The first Owner to obtain a building permit for a Lot to be served by a common driveway will initially pay all costs to construct, maintain and provide snow removal on the driveway. When another Owner obtains approval for a Unit accessed by such common driveway, as a condition to design approval, the Design Review Board will determine the pro rata benefit of the common driveway to each Unit and require reimbursement for original construction costs in accordance with such pro ration. After design approval is granted for Lots benefited by a common driveway, maintenance costs for the driveway will be shared by the Owners in accordance with the Design Review Board's pro ration. Common driveway maintenance and snow removal will be performed by the Association and costs will be paid as a Specific Assessment pro-rated as provided above by the benefited Owners, unless and until such Owners otherwise agree in writing.

PART SIX - RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Two Rivers as a community in which people enjoy living, working and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

ARTICLE XII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 12.1. Agreement to Encourage Resolution of Disputes Without Litigation.

a. Declarant, the Association and its officers, Directors, and committee members, Owners, all persons subject to this Declaration and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 12.2 in good faith effort to resolve such Claim.

b. As used in this Article, the term “Claim” shall refer to any claim, grievance, or dispute arising out of or relating to:

i. the interpretation, application, or enforcement of the Association Documents;

ii. the rights, obligations and duties of any Bound Party under the Association Documents; or

iii. the design or construction of improvements within the Project, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

iv. any claim asserted by the Association on its own behalf, or on behalf of the Owners of two or more Lots, for damages or other relief arising out of any alleged defect in the design or construction of improvements within the Project at any time while this Declaration is in force (“Construction Defect Claims”).

c. The following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2:

i. any suit by the Association to collect assessments or other amounts due from any Owner;

ii. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the Court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of this Declaration;

iii. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Association Documents;

iv. any suit in which any indispensable party is not a Bound Party; and

v. any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 12.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Section 12.2. Dispute Resolution Procedures.

a. Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

i. the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

ii. the legal basis of the Claim (*i.e.* the specific authority out of which the Claim arises);

iii. the Claimant’s proposed resolution or remedy; and

iv. the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

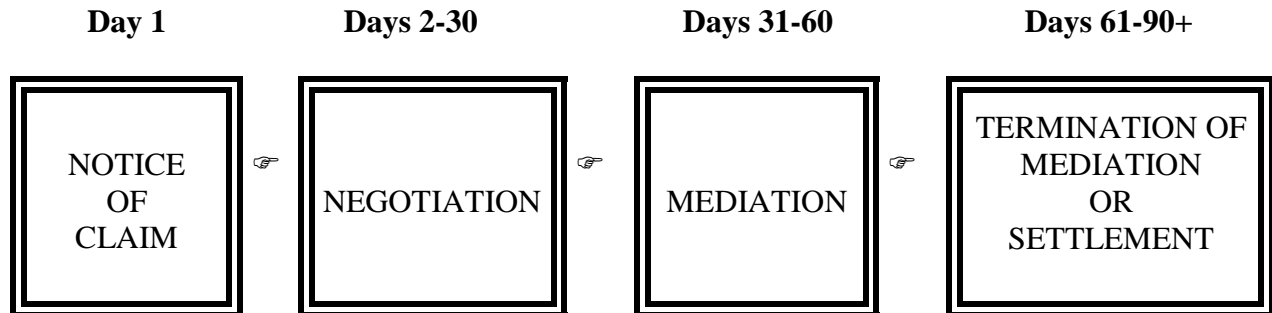
c. Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 12.2(a)(or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Colorado.

i. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

ii. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

iii. Each Party shall bear its own costs of the mediation, including attorneys' fees and each Party shall share equally all fees charged by the mediator.

ALTERNATIVE DISPUTE RESOLUTION PROCESS



d. **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In that event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

Section 12.3. Construction Defect Claims. To the extent of any insurance proceeds realized from the Association's property insurance the Association waives its claims for damages against any contractor or subcontractor involved in the construction of the Lots or the Common Elements. In addition to any requirements for initiating judicial proceedings provided in the Association Documents, the Executive Board shall not initiate a judicial proceeding with respect to a Construction Defect Claim, unless it complies with the disclosure and obtains approval from majority vote of the Owners as set forth in C.R.S. § 38-33.3-303.5 of the Act. In addition, the following procedures shall govern all Construction Defect Claims whether brought by the Association or by any Owner:

a. Final and Binding Arbitration of Construction Defect Claims.

i. If the parties do not agree in writing to a settlement of the Construction Defect Claim within 15 days of the Termination of Mediation, any Owner who is a Claimant shall have 15 additional days to submit the Construction Defect Claim to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. If the Association is the Claimant, the Executive Board shall have 15 days to deliver the meeting notice to Owners commencing the procedures required by the Act for consideration of whether a construction defect action should be pursued. If not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, the Construction Defect Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Construction Defect Claim;

provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

ii. This Section 12.3 is an agreement to arbitrate and is specifically enforceable under the applicable laws of the State of Colorado. Such agreement to arbitrate and all terms relating thereto in this Section 12.3 (including, without limitation, restrictions on Claimants rights to damages) shall apply, without limitation, to any "action" as defined in the Colorado Construction Defect Action Reform Act, C.R.S. § 13-20-802.5(1). The arbitration decision and the award, if any (the "Decision"), shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

b. Allocation of Costs of Resolving Construction Defect Claims. Each party, including, without limitation, any Owner and the Association, shall share equally all fees, expenses and charges payable to the mediator(s) and all fees, expenses and charges payable to the arbitrator(s) and the arbitration firm for conducting the arbitration proceeding. Under no circumstances, however, shall any party be entitled to recover any of its attorneys' fees, expenses or other mediation or arbitration costs (except to the extent specifically provided under C.R.S. § 38-33.3-123), from any other party. BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES OR EXPENSES (EXCEPT AS SPECIFICALLY PROVIDED UNDER C.R.S. § 38-33.3-123) IN CONNECTION WITH THE ARBITRATION OF A CONSTRUCTION DEFECT CLAIM. The limitation described above on awarding attorneys' fees and expenses shall not apply to enforcement actions undertaken pursuant to Subsection 12.3(d) below.

c. Limitation on Damages. Claimant shall not be entitled to receive any award of damages in connection with the arbitration of a Construction Defect Claim other than its actual damages, if any, and the Association and any Owner shall be deemed to have waived their respective rights to receive any damages in a Construction Defect Claim other than actual damages including, without limitation, attorneys' fees and expenses (except as specifically provided under C.R.S. § 38-33.3-123), special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A UNIT AND AS A MEMBER, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY CONSTRUCTION DEFECT CLAIM UNDER Section 12.3, THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION OR DESIGN DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

d. Enforcement of Resolution. If any Construction Defect Claim is resolved through arbitration pursuant to Subsection 12.3(a) above, and any Bound Party thereafter fails to abide by the terms of such agreement, or if any Bound Party fails to comply with a Decision, then any other party may file suit or initiate proceedings to enforce such agreement or Decision without the need to again comply with the procedures set forth in this Article XIII. Notwithstanding the terms of Subsection 12.3(b) above, in such event, the party taking action to enforce the agreement or Decision shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Decision including, without limitation, attorneys' fees and court costs.

e. Multiple Party Claims. Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action.

f. No Amendment; Enforcement by Declarant. The terms and provisions of this Section 12.3 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Property at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS Section 12.3 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS Section 12.3, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS Section 12.3 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHT AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL CONSTRUCTION DEFECT AFFECTING THE PROJECT OR ANY PORTION THEREOF, INCLUDING ANY UNIT.

g. This Section 12.3 is intended to apply to Construction Defects alleged in reference to construction of any portion of the Project under a contract in which Declarant is a party, and shall not be deemed to limit the Association in proceedings against a construction professional for Construction Defects alleged with respect to construction that takes place under a contract between the Association and a construction professional to which Declarant is not a party.

h. Any provisions of this Section 12.3 that are held invalid by a court of competent jurisdiction will be severed and the remaining provisions shall be enforceable.

Section 12.4. Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedure, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by 67% of the Owners, except that no such approval shall be required for actions or proceedings by the Association:

- a. initiated during the Declarant Control Period;
- b. initiated to enforce any Declaration provisions, including collection of Assessments and foreclosure of liens;
- c. initiated to challenge *ad valorem* taxation or condemnation proceedings;
- d. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- e. to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

ARTICLE XIII **MORTGAGEE'S RIGHTS**

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Lots in Two Rivers. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to all the Association Documents.

Section 13.1. Title Taken by Mortgagee. Any Mortgagee holding a First Mortgage of record against a Lot who obtains title to the Lot pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Lot is acquired.

Section 12.2. Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Lots for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Lot.

Section 13.3. Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 13.4. Financial Statement. Upon written request from any Agency or Mortgagee, which has an interest or prospective interest in any Lot or the Project, the Association shall prepare and furnish within ninety days any financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

Section 13.5. Notice of Action. Any Eligible Mortgagee and any Agency, which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Lot number), will be entitled to timely written notice of:

a. Any proposed act effecting a change in (i) the boundaries of any Lot or the exclusive easement rights appertaining thereto, (ii) a Lot's appurtenant interest in the Common Elements (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Lot, or (iv) the purposes to which any Lot or the Common Elements are restricted or any amendment set forth in Section 13.6 below;

b. Any proposed termination of the common interest community;

c. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Agency;

d. Any delinquency in the payment of Assessments owed by the Lot Owner subject to the Mortgage which such delinquency has continued for a period of sixty days;

e. Any lapse, cancellation or material modification of any insurance policy the Association maintains pursuant to Article VII.

Section 13.6. Amendment of Association Documents. Approval shall first be obtained of fifty-one percent (51%) of Eligible Mortgagees (which percentage is measured by votes allocated to such Lots) if the amendment to the Association Documents add or delete any material provisions, which establish, provide for, govern or regulate any of the following:

a. Voting;

b. Assessments, Assessment liens or subordination of such liens;

c. Reserves for maintenance or repair and replacement of the Common Elements;

d. Insurance or fidelity bonds;

e. Responsibility for maintenance and repair of the Project;

f. Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;

g. Boundaries of any Lot;

h. The interests in the Common Elements;

- i. Imposition of any restrictions on the leasing Lots;
- j. Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer, or otherwise convey his Lot;
- k. Establishment of self-management by the Association where professional management has been required by any Agency;
- l. Any provision, which is for the express benefit of an Agency or First Mortgagees, regardless of whether the amendment is material;
- m. Hazard or fidelity insurance requirements; and
- n. Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

Section 13.7. Action by Mortgagee. If this Declaration or any Association Documents require the approval of any Agency or Mortgagee then, if any Mortgagee or Agency fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

PART SEVEN - CHANGES IN THE COMMUNITY

Communities such as Two Rivers are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the surrounding community changes. Two Rivers and its Association Documents must be able to adapt to these changes while protecting the things that make Two Rivers unique.

ARTICLE XIV
DAMAGE OR DESTRUCTION

Section 14.1. The Role of the Executive Board. Except as otherwise provided in this Article, if damage to or destruction of all or part of any Common Elements, or other property covered by insurance written in the Association’s name (“Association-Insured Property”), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property.

Section 14.2. Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the cost of repair and reconstruction. As used in this Article “repair and reconstruction” shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or

destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

Section 14.3. Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 14.4. Funds for Repair and Reconstruction. Proceeds received by the Association from any hazard insurance it carries shall be used to repair, replace and reconstruct the Association-Insured Property. If said proceeds are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 14.5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. The first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

Section 14.6. Decision Not to Rebuild Common Elements. If at least sixty-seven percent (67%) of the Owners and all directly adversely affected Owners (as determined by the Executive Board) agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with applicable law.

ARTICLE XV **CONDEMNATION**

Section 15.1. Rights of Owners. If any authority having power of condemnation or eminent domain takes all or any part of the Common Elements, or whenever the Executive Board, acting as attorney-in-fact for all Owners under instruction from such authority, conveys all or any part of the Common Elements in lieu of such taking, each Owner shall be entitled to notice of the

taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 15.2. Partial Condemnation, Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Elements was conveyed, and the award shall be disbursed as follows: If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and at least sixty-seven percent (67%) of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions above regarding the disbursement of funds in respect to repair of casualty damage or destruction shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

Section 15.3. Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided above.

ARTICLE XVI **AMENDMENT**

Section 16.1 Amendment.

a. Except as otherwise specifically provided in this Declaration, any provision of this Declaration may be amended at any time by the affirmative vote or written consent, or any combination thereof, of at least 67% of the Owners. Any amendment must be executed by the President and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association. In addition, the approval requirements applicable to Mortgagees shall be met, if appropriate.

b. Notwithstanding anything to the contrary contained in this Declaration:

i. The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles and Bylaws, at any time for the purpose of correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provision without the consent of the Owners or First Mortgagees.

ii. The Declarant hereby reserves and is granted the right and power to record special amendments to the Declaration, the Articles and Bylaws at any time in order to comply with any requirement of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages, to comply with the Act, or to conform with any amendments, modifications, revisions or revocations of the Salida Code, without the consent of the Owners or any First Mortgagees.

Section 16.2. When Modifications Permitted. Notwithstanding any provisions in this Declaration to the contrary, no termination, extension, modification, or amendment of this Declaration made prior to the termination of Declarant's control shall be effective unless the prior written approval of Declarant is first obtained.

Section 16.3. Termination. This Project may be terminated as provided in the Act upon agreement of all of the Owners evidenced by a written instrument duly recorded.

ARTICLE XVII **GENERAL PROVISIONS**

Section 17.1. Failure to Enforce. Failure to enforce any provision of this Declaration or other Association Documents shall not operate as a waiver of any such provision or of any other provision of this Declaration.

Section 17.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 17.3. Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 17.4. References to the City Standards. Any reference in this Declaration to land use regulations, zoning regulations, or other City of Salida standards, any plats approved by the City 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 City of Salida standards, ordinances, plats or any other rule or law.

Section 17.5. Notices. Notices to Owners may be given as provided in the Act or the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-402.

Section 17.6. General. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders; similarly, capitalization of letters in a word shall not be construed to affect the meaning of such word. Except for annual, special and default assessment liens obtainable as provided herein, mechanics' liens, tax liens, judgment and execution liens arising by

EXHIBIT A
TO THE
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
TWO RIVERS

LEGAL DESCRIPTION

PHASE 1:

TWO RIVERS SUBDIVISION, PHASE 1, according to the Plat recorded on _____, 201_ at Reception No. _____ in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado

PHASE 2:

TWO RIVERS SUBDIVISION, PHASE 2, according to the Plat recorded on _____, 201_ at Reception No. _____ in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado

EXHIBIT B
TO THE
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
TWO RIVERS

EXPANSION PROPERTY

Lot Nos. 1 and 5, LITTLE RIVER PROPERTIES, LLC SUBDIVISION, according to the Plat recorded on December 12, 2016 at Reception No. 431288 in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado

Out Lots 1 and 2, LITTLE RIVER PROPERTIES, LLC SUBDIVISION, according to the Plat recorded on December 12, 2016 at Reception No. 431288 in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado

Out Lots 3, 4, 5, 6 and 7, TWO RIVERS P.D. DEVELOPMENT PLAN, MODIFICATION 1, according to the Plat recorded on _____, 201_ at Reception No. _____ in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado

That real property located in Chaffee County, Colorado, as described in the Deed recorded on May 2, 1997 at Reception No. 290402, Book 371, Page 211, Chaffee County Assessor's Parcel No. 38070430033, also known as 7193 County Road 105, Salida, Colorado 81201.

EXHIBIT C
TO THE
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
TWO RIVERS

RECORDED EASEMENTS

1. Reservation of right of proprietor of any penetrating vein or lode to extract his ore, in U.S. Patent recorded September 10, 1888, in Book 63 at Page 504.
2. Perpetual easement to the City of Salida from James L. Treat and Wanda L. Treat, for the construction, maintenance and operation of an underground sewer line located with the Southwest 1/4 of Section 4, being 20 feet wide, dated June 17, 1981, recorded on June 30, 1981 in Book No. 442 at Pat 932.
3. 20 foot wide non-exclusive utility easement to the City of Salida from James L. Treat and Wanda L. Treat, for the purpose of construction, installation, location, operation, maintenance, inspection, repair, replacement, and relocation of an underground water line and any necessary above-ground related facilities, dated November 15, 2012, recorded November 27, 2012 at Reception No. 403610.
4. Easement and right-of-way for Bale Ditch No. 1 crossing subject property as shown in Warranty Deed from James L. Treat and Wanda L. Treat to Little River Properties, LLC, dated December 27, 2017, recorded December 27, 2017 at Reception No. 404331.
5. Terms and conditions located on the Plat of "Little River Properties, LLC, Subdivision, located within the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 4, Township 49 North, Range 9 East of the New Mexico Principal Meridian, in the City of Salida, Chaffee County Colorado" filed on December 12, 2016 at Reception No. 432188. Also subject to the Two Rivers P.D. Development Plan of the Little River Properties, LLC Subdivision filed on December 12, 2016 at Reception No. 431291.

[ADDITIONAL EASEMENTS TO BE INSERTED AS COPIED BELOW]

EXHIBIT D
TO THE
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
TWO RIVERS

ALLOCATED INTERESTS

VOTES. Each Lot or Unit is allocated one vote in the Association. Any Lot which is developed as an apartment building or contains an accessory dwelling unit will be allocated a vote for each dwelling unit therein, and all such votes may be exercised by such Lot Owner.

ALLOCATED EXPENSES. Common Expense liability will be equally allocated to all Lots and Units, subject to the provisions in Section 8.1. A Lot which is developed as an apartment building or contains accessory dwelling units will be assessed one share of Common Expense liability for each dwelling unit therein.