

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
PRAIRIE RIDGE SUBDIVISION**

Clovis Point CO, LLC, a Colorado limited liability company (“Declarant”), is the sole owner of real property which is more particularly described on **Exhibit A**, and depicted on the **Exhibit B** draft Plat, attached hereto and incorporated by this reference generally known as the Prairie Ridge Subdivision and hereinafter referenced as the “Subdivision” or the “Community”. The Declarant desires to place limited protective covenants, conditions, restrictions, reservations, liens and charges upon the Subdivision to protect the Subdivision's quality residential living environment, to protect its desirability, attractiveness and value, and to ensure compliance with all applicable judicial decrees concerning water and water rights to be utilized within the Subdivision.

The Declarant hereby declares that all of the Subdivision as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, and for assurance of legal water usage, and all of which shall run with the land and be binding on and inure to benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

Certain documents are recorded in the real estate records of the Clerk and Recorder of El Paso County, Colorado at the reception numbers noted below, and referred to in this Declaration of Covenants as pertaining to the Subdivision. These include the Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree concerning underlying groundwater and approval of a Plan for Augmentation as entered by the Water Court, Water Division No. 1 in Case No. 06CW100 recorded at Reception No. \_\_\_\_\_ (“Augmentation Plan” or “Water Decree”), attached hereto as **Exhibit C**.

**I. DEFINITIONS**

1. Definitions. The following terms utilized herein shall have the following definitions for purposes of these Declarations:

A. Act. The Act is the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101 to 38-33.3-402, as amended from time to time, which may provide a uniform and comprehensive framework for common interest communities. Notwithstanding anything else herein to the contrary, Prairie Ridge Subdivision is exempt from all provisions of the Act except C.R.S. §§38-33.3-105 to 38-33.3-107 as set forth in Paragraph 2, concerning taxation, applicability of local codes, and eminent domain.

B. Association. Declarant by this Declaration forms the Prairie Ridge Homeowners Association, to be incorporated consistent with the provisions of Colorado law for non-profit corporations. The Association shall represent the owners of Lots within the Subdivision, and shall have the following powers:

i. To operate the Community in accordance with this Declaration;

ii. To promote the health, safety, welfare and common benefit of the Owners and residents of the Subdivision consistent with the terms and conditions of this Declaration;

iii. To do any and all permitted acts and to have and exercise any and all powers, rights and privileges that are granted to an Association under the laws of the State of Colorado, consistent with this Declaration, and with any Bylaws, Rules or other forming or governing documents of the Subdivision and Association.

C. Common Elements. The “Common Elements” are limited to that easement reserved to and owned by the Association consistent with the **Exhibit B Plat** necessary for the construction, maintenance and operation of the “augmentation well” if and when necessary, as described in the Water Decree.

D. Common Expenses. The “Common Expenses” are the expenses or financial liabilities for the operation of the Association, and as many be necessary for the construction, maintenance, repair and operation of the augmentation well, as described in the Water Decree. “Common Expense Assessments” are funds required to be paid by each Lot owner in payment of such Owner’s pro-rata share of Common Expenses. These expenses may include, but are not limited to:

i. Expenses related to administration, maintenance, construction, improvement, repair or replacement of Common Elements;

ii. Expenses for utilities not separately metered and billed directly to Lot owners, if any;

iii. Expenses declared to be Common Expenses by this Declaration or applicable law;

iv. Expenses agreed upon as Common Expenses by vote of the Lot owners;

v. Reasonable reserves established by the Association, if any, whether held in trust or by the Association for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

In addition, any costs and expenses imposed upon the Association which benefit fewer than all of the Lots within the Subdivision shall be a "Common Expense" but, except as otherwise stated in this Declaration, shall be assessed exclusively against those Lots benefitted.

E. Director. A Director is a member of the Executive Board, also called the Board of Directors, of the Association.

F. Governing Documents are this Declaration of Covenants and any amendments thereto executed in accordance with the procedures herein, the Association Bylaws and Articles of Incorporation, and any properly Rules enacted by the Association for the Subdivision.

G. Improvements. Improvements are any construction, structure, equipment, fixture, or facilities existing, or to be constructed on, the property that is included in the Subdivision, including, but not limited to, residences, buildings, trees, and shrubbery planted by Lot owners, the Declarant, or the Association, utility wires, pipes, poles, light poles, swimming pools, painting of the exterior surfaces of any structure, additions, outdoor sculptures or artwork, sprinkler pipes, garages, barns, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, porches, sheds, fixtures, signs, exterior tanks, tennis courts, solar equipment, exterior air conditioning and water softener fixtures, grading, excavation, filling, or similar disturbance to the land, including, change of grade, change of drainage pattern, change of ground level, or change of stream bed, and any change to previously approved Improvements.

H. Lot. If used in this Declaration then term "Lot" shall mean one of the seven lots created through the El Paso County land use planning process for the Prairie Ridge Subdivision. It is Declarant's intent that the Lot numbers used herein, if at all, correspond to the Lot numbers assigned on the Subdivision Plat (the Plat being recorded in conjunction with this Declaration, and attached as **Exhibit B**).

I. Member. As used in this Declaration, the term "Member" shall be a member/Lot owner within the Association.

J. Plat. Plat means that certain document entitled "Plat of Prairie Ridge Subdivision," to be recorded in the Records of the Clerk and Recorder for El Paso County, Colorado.

K. Rules. The Rules are the regulations for the use of Common Elements and for the conduct of persons within the Common Interest Community, as may be adopted by a simple majority of Lot owners from time to time pursuant to this Declaration.

## II. COMMUNITY

1. Name and Type of Community. The name of the Community is Prairie Ridge. Prairie Ridge is a planned community, but is exempt from the Act as set forth below.

A. Association. The name of the Association is Prairie Ridge Homeowners Association, Inc., a Colorado non-profit corporation.

B. Exemption From the Act. In accordance with C.R.S. §38-33.3-116(2), the property covered by the Subdivision is only subject to C.R.S. §§38-33.3-105, 38-33.3-106 and 38-33.3-107 of the Act as the annual average common expense liability of each Lot, exclusive of any optional user fees and any insurance premiums paid by the Association, shall not exceed four hundred dollars, as adjusted pursuant to C.R.S. §38-33.3-116(3). Except as stated in this Paragraph 1.B., the Act shall not apply to this Declaration, the Association, the Subdivision, or the Prairie Ridge property.

2. Maintenance of Lots/Property.

A. Individual Lots. It shall be the duty and obligation of each Owner of a Lot within the Subdivision, at such Owner's expense, to beautify and keep neat, attractive, and in good order such Owner's residence and the exterior portions of the dwelling thereon, and to maintain, repair, and replace the same.

B. Duties of the Association. The Association shall construct, maintain, repair, and replace, to the extent that such functions are not expected to be performed by any political subdivision of the State of Colorado, all of the Common Elements, including, but not limited to, the augmentation well as described in the Water Decree. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of this Declaration of Covenants. If such expense is attributable to a specific Lot owner, such expense may be assessed following notice and hearing, consisting of 30-days advance written notice to said Lot owner, and an opportunity to voice any concerns or complaints to the Executive Board at its next scheduled Association meeting.

3. Easements.

A. Existing Easements. All easements or licenses to which the Community is presently subject are shown on the Plat, attached as **Exhibit B**, specifically including but not limited to the well easement in the northwest corner of Lot 1, retained by and owned by the Association.

B. Granting of Future Easements. The Community, and individual Lots within the Community, may be subject to other easements or licenses granted by the Declarant if provided for by this Declaration.

C. Easements Reserved and Restrictions on Drainage Easements. Easements and rights of way are reserved on, over, and under the Common Elements

and the Lots as shown on the Plat, for construction, maintenance, repair, replacement, and reconstruction of poles, wires, pipes and conduits for lighting, heating, air conditioning, electricity, gas, telephone, drainage and any other public or quasi-public utility service purposes, for sewer and pipes of various kinds, and for any other necessary maintenance or repair.

D. Easement for Emergency Access. There is hereby created a right of access across all portions of the Subdivision for the passage of emergency vehicles and police, fire, and other emergency service workers.

4. Subdivision/Building Restriction. The Subdivision consists of seven (7) lots, and by these Covenants, a building restriction is hereby placed on all Lots within the Prairie Ridge Subdivision prohibiting the construction of any permanent structures, buildings or above ground improvements on any platted drainage/stormwater easements, public utility easements, building setbacks, augmentation well easement, or other vested rights of way. An owner of one or more adjacent Lots may vacate interior lot lines through processes prescribed by El Paso County, but no further subdivision of any Lot shall be permitted.

### **III. DECLARANT'S RIGHTS AND RESERVATIONS**

1. Declarant's Easement. The Declarant reserves the right to perform warranty work, repairs, and construction work on Lots and Common Elements, to store materials in secure areas, and to control, and have the right of access to, work and repairs until completion of Declarant's work within the Subdivision. All work may be performed by the Declarant and his agents and assigns without the consent or approval of the Association. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising his rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to utility providers, special districts, El Paso County, or the State of Colorado.

2. Signs and Marketing. The Declarant reserves the right to post and maintain signs and displays on any Lot owned by Declarant and in the Common Elements in order to promote sales of Lots. Declarant also reserves the right to conduct general sales activities in a manner that will not unreasonably disturb the rights of Lot owners.

3. Declarant's Property. The Declarant reserves the right to remove and retain all his property and equipment used in the sales, management, construction, and maintenance of the Property, whether or not they have become fixtures.

4. Declarant Control of the Association.

A. Subject to Paragraph III.5, below, there shall be a period of Declarant control of the Association, during which a Declarant, or any persons designated by the

Declarant, may appoint, and remove non-elected officers, of the Association, and Members of the Executive Board, and such persons are not required to be Lot owners. The period of Declarant control shall terminate no later than sixty (60) days after the last conveyance of a Lot by the Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association, and Members of the Executive Board, before termination of the period described above. In that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

B. Not later than 60 days after conveyance to Lot owners other than a Declarant of 25 percent of the Lots (*i.e.* 2 Lots), at least one Member of the Executive Board shall be elected by Lot owners other than the Declarant. If said Lot owners are unable to elect with a majority such Member, Declarant's appointment shall remain. Not later than 60 days after conveyance to Lot owners other than a Declarant of a majority of the Lots (*i.e.* 4 Lots), not less than 2 of the Members of the Executive Board must be elected by Lot owners other than the Declarant, unless such lot owners are unable to elect such Member(s), in which case Declarant's appointees shall remain.

C. Following the termination of any period of Declarant control, the Lot owners shall elect an Executive Board of at least three Members, all of whom shall be Lot owners. If any Lot is owned by a partnership, limited liability company, corporation, or similar entity, any officer, partner, manager, member, or employee of that Lot owner shall be eligible to serve as a Member of the Executive Board and shall be deemed to be a Lot owner for the purposes of the preceding sentence. The Executive Board shall elect the officers. The Executive Board Members and officers shall take office upon election.

D. Notwithstanding any provision of this Declaration, or the Bylaws to the contrary, following proper notice the Lot owners, by a vote of 67 percent of all Lot owners present and entitled to vote at a meeting of the Lot owners at which a quorum is present, may remove a Member of the Executive Board, with or without cause, other than a Member appointed by the Declarant.

5. Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: as long as the Declarant (a) is obligated under any warranty or obligation; (b) owns any Lot; (c) owns any Security Interest in any Lot; or (d) four (4) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute. Nothing herein shall be deemed to affect the exemption from the Act as set forth in pursuant to Paragraph II.2.B. of this Declaration.

#### **IV. USE AND CHARACTER OF COMMUNITY**

1. Flexibility. All Lots within the Community shall be held, used, and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board if such strict application would unreasonably or unduly burden a Lot owner under the Lot owner's applicable circumstances. Any such modification or waiver must be in writing.

2. Authority. All provisions of this Declaration and the Rules shall apply to the Lot owners, and their guests, tenants, invitees, and licensees. Lot owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice of such authority and that the ability of Lot owners to use their Lots may be limited by the provisions in this Declaration and the Rules and that the Board may establish penalties for failing to adhere to the regulations contained within the Governing Documents. Lot Owners shall be responsible for fines assessed to them due to their tenants, guests, invitees, or licensees for violations of the Governing Documents, which are collectable as assessments.

3. Use/Occupancy. All lots shall be known, described, and used only as single-family residential lots and shall not be used for more than one residential home, private garage, guest house, and barn, all in keeping with the character of the community. A guest house is a detached structure containing a kitchen, multi-purpose room, and not more than two bedrooms and one bathroom. A guest house may only be used for family members, visitors, or guest of the Owner. Guest houses may not be rented. Notwithstanding the foregoing, home-office type purposes may be permissible under El Paso County zoning and land use regulations applicable to the Subdivision, provided that such activities do not result in excessive traffic, parking, or any offensive or noxious activities, or otherwise jeopardize the character of the Subdivision, and the business conducted is clearly secondary to the residential use of the Lot.

4. Dwellings and Buildings.

A. Construction Type. All construction shall be new. No building previously used at another location, nor any building or structure originally constructed as a "mobile home" type dwelling or manufactured housing (to the extent such structures have the appearance of "mobile homes" or "doublewides"), nor domes may be moved onto any Lot within the Subdivision. Panels and major house components may be manufactured off-site, provided that the assembly is conducted on-site and the resulting structure does not have the appearance generally associated with manufactured housing.

B. Dwelling Area Requirements. No dwelling structure shall be constructed unless the ground floor area, *i.e.* footprint area, of the main structure exclusive of open porches, basements, and garages, is greater than one thousand six hundred (1,600) square feet. Attached garages are required for any future constructed homes and shall be of size to accommodate not less than two full-sized cars, and for purposes of this paragraph "attached" may include by breezeway. Owners are

encouraged to have a full basement whenever possible. Ranch style homes must have a basement equal to at least three-fourths ( $\frac{3}{4}$ ) of the square footage of the main level.

C. Building Material Standards. Siding such as aluminum or vinyl is not permitted. Aluminum, wood or vinyl clad windows are permitted; however, all aluminum windows shall be anodized and painted or coated with a color to blend with or compliment the color of the dwelling. No reflective siding or roofing materials shall be permitted.

5. Underground Utilities. All future newly installed utilities, except for lighting standards and customary service devices for meters, transformers, access, control or use of utilities, shall be installed underground. Small satellite dishes for tele-communications shall be permissible.

6. Landscaping, Erosion, and Weed Control.

A. Maintaining of Drainage. There shall be no interference with the established drainage pattern as planned by Declarant for the entire Subdivision, including those drainage structures identified and included on the Plat.

B. Erosion Control. Lot owners are responsible for proper drainage and erosion control across their Lot, and minimizing erosion, as well as maintenance of erosion control measures within their property boundary.

C. Weeds. Lot owners are responsible for controlling and removing weeds declared noxious by applicable governmental authorities.

D. Irrigation. All irrigation and in-house water use from ground water sources is governed, limited, and to be managed in accordance with the Water Decree.

7. Animals.

A. No animals or livestock of any kind shall be housed, raised or kept on any Lot within the Subdivision, either temporarily or permanently, except as expressly provided in this Paragraph 7, as follows:

i. Commonly accepted domesticated birds, fish, dogs, cats, and other small domestic animals permanently confined as household pets;

ii. An aggregate of not more than five (5) domesticated dogs and cats, or similar animals, and up to six (6) horses, or other similarly large livestock (i.e., donkey, llama, alpaca, mule, sheep, goat) may be maintained in or kept on each Lot. No such domesticated animals may be kept or maintained in violation of provisions of the Water Decree, attached as **Exhibit C**, nor in violation of any government regulation, and all such domesticated animals must be thoroughly secured and maintained within the Lot of the owner of such animals, and any and all such "farm animals" shall be kept for the use and enjoyment of the Lot owner, not for commercial purposes; and



iii. Fowl, chickens, ducks or similar fowl, not to exceed twelve (12), for personal use and enjoyment of the Lot owner may be kept and maintained in accordance with the El Paso County chicken ordinances and applicable resolutions; no roosters, drakes, or ganders (male birds) are permitted.

iv. Beekeeping is allowed, to a maximum of one (1) hive, subject to member input regarding potential member health and safety concerns, hive location, and Board approval.

B. No animal of any kind shall be permitted which produces sounds or smells that may be reasonably regarded as offensive, or as a nuisance.

C. No kennels, whether for breeding, rent, or sale shall be allowed within the Subdivision.

D. Incessantly barking and/or off-leash dogs, and loose cats, may harm wildlife and disturb the peace of the Subdivision, and are therefore prohibited. Dogs shall not be permitted to run loose and shall be kept under the control of the Owner at all times. No exterior doghouses or kennels will be permitted unless fully screened from all adjacent streets and houses, and designed to blend with the overall architecture of the primary dwelling structure on the Lot.

E. All chickens, ducks, geese, or similar fowl, shall be kept within an adequately sized shelter for the entire flock of fowl, and all fowl must have access to a fenced area no larger than 1,600 square feet in size. The structure and enclosure shall be of finished construction, completely enclosed, and complimentary to the design, construction, location and color of the primary dwelling structure on the Lot, and no such ancillary facilities may be constructed on any Lot prior to completion of construction of said primary dwelling structure except in cases of multiple contiguous lot ownership wherein a house has been constructed on one of the contiguously owned Lots within the Subdivision.

F. Horses, and similar livestock, shall be kept within an enclosure, corral, stable, loafing shed, or barn at all times when not being used for riding or controlled grazing. Open uncontrolled grazing is prohibited. Grazing and pasturing is allowed, but not to the point of overgrazing and damaging the land as would be defined by the Soil Conservation Service. Property of the nature contained within the Community is not capable of extended grazing without damage to natural grass and vegetation. Therefore, grazing animals must be fed supplementary and kept controlled as necessary to prevent overgrazing and/or damage to the land within the Community. As such, controlled grazing outside of an enclosure, corral, stable or barn shall not exceed 10 hours during any 24-hour period, in order to preserve natural grass and minimize erosion. During unusually dry seasons or drought cycles, owners shall further curtail the controlled grazing adequately to preserve the natural grass and minimize erosion. El Paso County regulations which may govern locations and maintenance of stable facilities, if more

stringent than this Declaration, shall pertain. Stables, barns, loafing sheds, corrals or other enclosures shall be of finished construction, completely enclosed, and complimentary to the design, construction, location and color of the primary dwelling structure on the Lot, and no such ancillary facilities may be constructed on any Lot prior to completion of construction of said primary dwelling structure except in cases of multiple contiguous lot ownership wherein a house has been constructed on one of the contiguously owned Lots within the Subdivision.

G. All barns, stables, sheds, corrals, and outbuildings, or any structure for housing, shelter, and enclosure of animals on any Lot shall at all times be kept in as neat and sanitary condition as possible with no unreasonable accumulation of manure or other waste, and shall be maintained in compliance with all lawful sanitary regulations.

H. All animals kept on a Lot within the Community shall be adequately quartered and humanely treated at all times, and shall be kept in accordance with local and State rules and regulations, including as pertains to C.R.S. § 35-42-101 through C.R.S. § 35-42-115 regarding animal care, animal cruelty/mistreatment, animal abandonment, and animal neglect. Lot owners may be prosecuted for failing to adhere to applicable animal care laws and the Association shall comply with any law enforcement agency or regulating body during the course of such actions.

8. Fencing. All fencing shall be designed to blend with the architectural design of the main dwelling structure, and the overall appearance of the community. Accent fencing consisting of 3 or 4 rail fencing in cedar (standard grade split rail), treated lumber, vinyl, or similar upgraded materials may be constructed. If constructed, the accent fence shall be required to extend for fifty (50) feet on either side of the Lot's driveway or to the nearest Lot corner, whichever is shorter, or as approved by the Board. Barbed wire and chain link fencing is prohibited. Any perimeter fencing installed upon any lot by Declarant shall be owned and maintained by that Lot owner consistent with the provisions of this Paragraph 8. Lot owners may install privacy fencing not to exceed an enclosed area of twelve thousand (12,000) square feet, subject to Board approval. Allowed privacy fencing materials will be cedar in natural wood color with pickets up to seven (7) feet in height and six (6) inches in width. Painting of privacy fencing will not be allowed, although clear-coat or pigment staining for weather protection is encouraged.

9. Parking and Vehicles.

A. Passenger Vehicles. Up to three (3) street legal passenger vehicles may be parked on a driveway or garage apron. Additional vehicles can be approved by the Board of Directors upon request by the Lot owner.

B. Trailers. A Lot owner may park up to two (2) allowed trailers (utility/cargo trailers or horse trailer) adjacent to a Dwelling or Building on the Lot, provided that the length of the utility/cargo trailer does not exceed twenty (20) feet, and the horse/stock trailer does not exceed six horses, regardless of living/sleeping capacity. The maximum height of any trailer is thirteen (13) feet six (6) inches. A trailer will be

considered to be parked adjacent to the building if the distance between the wall of the building and the inner edge of the trailer is less than six (6) feet in the instance of a single trailer, or less than fifteen (15) feet for two (2) trailers. If two trailers are parked adjacent to the same building, they shall be parked parallel to one another.

C. Recreational Vehicles, Boats and Other Vehicles. No boat, trailer, camper (not installed on its supporting vehicle), tractor, commercial vehicle, mobile home, motor home/RV, trail bikes, mini-bikes, motorcycles, all-terrain vehicles, snowmobiles, or any other type of recreational vehicle, or any towed truck, excepting pickup trucks solely for private use of the residents of a dwelling, shall be parked on any Lot in a manner visible to an adjacent Lot owner for greater than fourteen (14) consecutive days, except to the extent effectively screened from view or maintained in a completely enclosed structure or accessory building. Screened areas may not exceed 800 square feet in size, with the longest dimension not to exceed fifty (50) feet. The screened structure must be adjacent to an existing structure and constructed in a manner complimentary in design to the primary dwelling structure.

D. Equipment. Equipment used for construction, excavation, farming, ranching, or other activities not related to member maintenance of their property, including commercial trucks, may not be parked or stored within the Subdivision, unless such parking or storage is within a garage on the Lot, is authorized in writing by the Board of Directors, or is otherwise exempted by Colorado law. Commercial trucks used for the primary purpose of transporting the member, or the member's immediate family, are exempted.

E. Abandoned/Project Vehicles. No stripped down, abandoned, unlicensed, partially wrecked or junk motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot within the Subdivision in such a manner as to be visible at ground level from any neighboring Lot within the Subdivision at any time.

10. Other.

A. Accessory Building and Yard Items. All future constructed "accessory buildings" or structures, or yard items, whether movable or immovable, including without limitation, children's play or swim sets, basketball hoops, equipment or appliances, fountains, yard ornaments, masonry figures, and above-ground swimming pools, shall be permitted only if they are designed and installed to blend in with the overall architecture of the main dwelling structure. Metal and pre-manufactured storage sheds will not be allowed, except to the extent they likewise blend in with the overall architecture of the main dwelling structure. No accessory building, outbuilding, or other temporary structure, including sheds, trailers, shacks, barns, or detached garages or carports, shall be allowed on any Lot at any time for residential purposes, either temporarily or permanently.

B. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except for built-in speakers on the decks and patios adjoined to or in the

immediate vicinity of primary dwelling structures, and for security devices used exclusively for security purposes, shall be located, used or placed on any structure or within any Lot. Volumes of such permitted exterior sound devices shall be maintained at such a level as to maintain the peace and tranquility of the community and subdivision.

C. Antennas. Attic antennas inside any dwelling (as opposed to roof antennas) are effective, are less vulnerable to damage, and are encouraged. Visible antennas are prohibited. Small satellite dish antennas may be installed where they will be unobtrusive. Only devices 28 inches in largest dimension or smaller shall be permitted unless screened in a manner that precludes unattractive views from public roads and adjoining Lots within the Subdivision.

D. Signs. All signs, their shape, size, content, and length of time for display must first be approved in writing by the Board of Directors or their designated representative. Real-estate, including both "For Sale" and "For Rent," and construction/building signs may be placed without approval, provided the signs do not exceed four (4) square feet and are not up for longer than three (3) months. Signs erected for more than three (3) months require approval of the Board.

E. Refuse. Rubbish, garbage, trash, refuse, or other waste shall be kept and disposed of in a sanitary manner. All garbage or trash containers shall be kept in an enclosed attached garage or placed in a screened area so that they are not visible from other Lots or from public roads. No trash, litter, or other such items shall be permitted to remain exposed on any area of a Lot that is visible from any other Lot or from public road. Unscreened dumpsters are allowed for the duration of a Board approved project, and during construction of the residence. Temporary unscreened dumpsters are allowed for up to ninety (90) days. Permanent dumpsters must be screened in accordance with this Declaration or as otherwise approved in writing by the Board. If, after reasonable written notice is given, a Lot owner repeatedly violates the guidelines of this Paragraph 9.E. concerning refuse and rubbish, in addition to any other remedies, the Association shall have the right to cause such rubbish, trash, or garbage to be removed by any appropriate means and to charge the cost thereof to such Lot owner.

11. Nuisance. No noxious or offensive activity shall be permitted upon any Lot, nor shall actions intended to or tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood be permitted on any Lot. No hazardous activities may be permitted upon any Lot or in any living unit. No annoying lights, sounds or odors shall be permitted to emanate from any Lot. Outdoor lighting will be permitted to the extent it does not create a visual nuisance to neighboring or nearby property Owners. Any exterior lighting on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb residents of adjacent or nearby Lots within the Subdivision. Lighting designs consistent with the design provisions of the "International Dark-Sky Association" are required, minimizing local and regional light pollution. No activities which pollute or have the potential to pollute any well, surface water right, groundwater aquifer, or other water resource shall be permitted within the Subdivision. No trail bikes, mini-bikes, motorcycles, all-terrain vehicles, snowmobiles, or other such noise causing vehicles shall be operated

within the Subdivision other than on county roads and going to and from residences, or for use in maintenance activities upon a Lot, or during emergency situations including but not limited to flood, fire, and blizzard/snow emergencies. No activity shall be permitted which will generate a noise level sufficient to interfere with the peaceful and reasonable quiet enjoyment of the persons on any adjoining or nearby Lots within the Subdivision. No hunting of any kind by any form or device, nor the discharge of any type of firearm, explosive, or fireworks devices shall be permitted, unless the discharge of firearms is operated in a reasonable manner and during reasonable hours. Firearms shall be operated in accordance with state law, and Lot Owners must take all reasonable precautions to ensure that projectiles cannot go through, over, or under property or property lines. The Association is not responsible for, and shall be released from any resulting liability of damage or injury as the result of reckless or negligent behavior.

12. Wells and Mineral Excavation. No portion of any Lot within the Subdivision shall be used to explore for or to remove any water, soil, hydrocarbons, or other minerals of any kind, with the exception of properly permitted and authorized water wells consistent with the augmentation plan described in the Water Decree.

13. Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on a Lot, the owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Association, or the owner shall cause the damaged or destroyed Improvement to be demolished, removed, and the Lot to be suitably landscaped so as to present a pleasing and attractive appearance. All such restoration, or demolition and removal, shall be completed within 1 year of the event causing the damage or destruction.

14. Compliance with Laws. No improper, offensive, or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

## **V. THE ASSOCIATION**

1. Authority and Governance of Association. The business affairs of the Community shall be managed by the Association. The Association is governed according to this Declaration, the Plat, its Bylaws and Articles of Incorporation, and any Rules adopted by the Board of Directors.

2. Membership. Every person who is a recorded Lot owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separation from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership.

3. Voting. The Lot owners in the Community, including the Declarant as to any Lots owned by the Declarant, shall have one vote in the affairs of the Association per Lot owned provided, however, that if a Lot owner combines two or more Lots with the intent of utilizing the combined Lots for a single residence, such resulting combined Lots shall have only a single vote. If more than one person owns a Lot, those persons must agree on how to cast that Lot's membership vote. Co-owners may not cast fractional votes. A vote by a co-owner for the entire Lot's membership interest shall be deemed to be pursuant to a valid proxy, unless another co-owner objects at the time the vote is cast, in which case such Lot's membership vote shall not be counted. Combined Lots shall each have one vote (*i.e.*, thereby resulting in fewer total votes).

4. General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Prairie Ridge Subdivision community as provided in this Declaration so as to protect the value, quality, and desirability of the Community and the Lots. The Association, subject to the limitations contained in this Declaration and its Articles of Incorporation, shall have the powers and duties necessary for the administration of the affairs of the Association and of the Community, which shall include, but not be limited to, the following:

- a. Adopt and amend Bylaws, Rules, and regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves;
- c. Collect Common Expense assessments from Lot owners;
- d. Hire and discharge managers;
- e. Hire and discharge independent contractors, employees, and agents other than managing agents;
- f. Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of, or otherwise enforce, the Association's Declaration, Bylaws, or Rules in the Association's name, on behalf of the Association, or two or more Lot owners on matters affecting the Community;
- g. Make contracts and incur liabilities, including debt necessary for fulfillment of Association duties;
- h. Regulate the use, maintenance, repair, replacement, and modification of the Common Elements, and, to the extent set forth in this Declaration;
- i. Cause additional Improvements to be made as a part of the Common Elements;

j. Acquire, hold, encumber, and convey, in the Association's name, any right, title, or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only as provided herein;

k. Grant easements for any period of time, including permanent easements, and leases, licenses, and concessions through or over the Common Elements;

l. Impose and receive a payment, fee, or charge for the use, rental, or operation of the Common Elements and for services provided to Lot owners;

m. Impose a reasonable charge for late payment of assessments, and after providing written notice, levy reasonable fines for violations of this Declaration, the Bylaws, Rules, and regulations of the Association;

n. Impose a reasonable charge for the preparation and recordation of amendments to these Declarations and for a statement of unpaid assessments;

o. Provide for the indemnification of the Association's officers and Board, if any, and/or maintain directors' and officers' liability insurance;

p. Assign the Association's right to future income, including the right to receive Common Expense assessments to such parties and entities as may be approved by the Association's membership consistent with the provisions herein;

q. Exercise any other powers conferred by this Declaration, the Bylaws, or applicable law;

r. Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

s. Exercise any other power necessary and proper for the governance and operation of the Association; and

t. By resolution, establish permanent and standing committees to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot owners.

5. Executive Board/Board of Directors Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Community, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

6. Association Records and Minutes of Association Meetings. The Association shall permit any Lot owner, or holder, insurer, or guarantor of first mortgages secured by Lots, to inspect the records of the Association and the minutes of Association and committee meetings during normal business hours.

7. Adoption of Rules. The Association may adopt Rules regarding the use and occupancy of Lots as they affect the Common Elements and the activities of occupants, subject to appropriate notice and comment opportunities.

8. Notice. Notice of matters affecting the Community or a specific Lot owner must be given by the Association or through access to Association record, as further provided in the Bylaws or as otherwise provided by the Rules.

9. Indemnification. To the full extent permitted by law, each officer, director, committee member or volunteer of the Association shall be indemnified by the Association against all expense and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, member, or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, member, or volunteer at the time such expenses are incurred, except in such cases wherein such officer, director, member, or volunteer is adjudged guilty of breaching his or her duty of care in the performance of his or her duties.

## **VI. ASSESSMENTS**

1. Annual Assessments. Common Expense assessments may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget for the annual assessments shall be submitted to the Lot owners for approval as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget will be voted on at the annual meeting provided a quorum is present and upon the affirmative vote of a majority of the Lot owners present and voting at that meeting. If the budget is not passed by a simple majority of the quorum present, then the last approved budget remains in effect. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification, or release of the Lot owners from their obligation to pay.

### **2. Assessment of Common Expenses.**

A. Apportionment of Common Expenses. Except as otherwise expressly provided in this Section VI, all Common Expenses shall be assessed against all Lots in accordance with their percentage interests in the Common Expenses, *i.e.*, initially 1/7<sup>th</sup> per Lot, subject to the Declarant's/owners' right, if any, to combine Lots, thereby reducing the total number of Lots and reallocating the percentage interests in the Common Expenses. This shall include, but not be limited to, Common Expenses for



reasonable maintenance and replacement of the Common Elements. Without limiting any other authority regarding assessments provided for in this Declaration, assessments may, but shall not be required to be made in advance for any maintenance or repairs to the Common Elements.

B. Common Expenses Attributable to Fewer than all Lots.

i. Any Common Expense for services approved by the Association and provided by the Association to an individual Lot, or some Lots but fewer than all the Lots, at the request of the particular Lot owner or owners shall be assessed only against the requesting Lot(s) (“Individual Assessment”).

ii. An assessment to pay a judgment against the Association may be made only against the Lot(s) in the Community at the time the judgment was entered in proportion to their Common Expense liabilities.

iii. If a Common Expense is incurred by the action or inaction of a Lot owner, the Association may assess that expense exclusively against that Lot owner’s Lot.

iv. Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against a Lot owner pursuant to this Declaration, or any Rules and Bylaws lawfully enacted by the Association, and the Act are enforceable as Common Expense assessments.

3. Lien.

A. The Association is hereby granted, and shall have, a lien on a Lot for a Common Expense assessment levied against the Lot for fines imposed against its Lot owner. Fees, charges, late charges, attorneys’ fees, fines, and interest charged pursuant to the Association’s authority under this Declaration, any Rules or Bylaws lawfully enacted by the Association are enforceable as assessments under this Section VI. The amount of the lien shall include all those items set forth in this Subparagraph VI.3. from the time such items become due. If a Common Expense assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

B. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a first Security Interest on the Lot recorded before the date on which the Common Expense assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Subparagraph does not affect the priority of mechanic’s or materialmen’s liens or the priority of a lien for other assessments made by the Association. By purchasing a Lot, a Lot owner waives all federal and state homestead and other exemptions with respect to the lien for Common Expense assessments.

C. Recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense assessment under this Section is not required.

D. A lien for an unpaid Common Expense assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the Common Expense assessment becomes due, except that if an owner of a Lot subject to a lien under this Paragraph VI.3. files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

E. This Paragraph VI.3 does not prohibit an action to recover sums for which Subparagraph i. of this paragraph creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

F. A judgment or decree in any action brought under this Paragraph VI.3. shall include costs and reasonable attorneys' fees for the prevailing party, which shall be additional Common Expense assessments.

G. A judgment or decree in an action brought under this paragraph is enforceable by execution under Colorado law.

H. The Association's lien must be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

#### 4. Payment of Common Expense Assessments.

A. Certificate of Payment of Common Expense Assessments. The Association, upon written request, shall furnish a Lot owner with a written statement setting out the amount of unpaid Common Expense assessments against the Lot. The statement must be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, and each Lot owner. A reasonable fee, established by the Association, may be charged for such statement.

B. Bi-annual Payment of Common Expenses. All Common Expenses assessed under this Declaration shall be due and payable bi-annually unless otherwise determined by the Association. At the option of the Association Common Expenses may be assessed each month after actual expenses are incurred.

C. Acceleration of Common Expense Assessments. In the event of default in which any Lot owner does not make the payment of any Common Expense assessment levied against his Lot within 10 days of the date due, the Association shall have the right, after providing written notice, to declare all unpaid Common Expense assessments for the pertinent fiscal year immediately due and payable.

D. Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Lot to a third-party Lot owner other than the Declarant occurs. Common Expense Assessments shall be levied against and payable by the owners of all Lots, including Lots still owned by Declarant.

5. No Waiver of Liability for Common Expenses. No Lot owner may become exempt from liability for payment of the Common Expense assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense assessments are made.

6. Personal Liability of Lot Owners. The Lot owner, at the time a Common Expense assessment or portion of the assessment is due and payable, is personally liable for the Common Expense assessment. Personal liability for the Common Expense assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation.

7. Reserve Fund. The Association may in its own discretion maintain a reserve fund to meet foreseen and unforeseen expenditures and may establish assessments for the same.

8. Special Assessments. In addition to the other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, the costs of any construction, restoration, or unbudgeted repairs or replacements of improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for approval. Any proposed Special Assessment will be voted on at the annual meeting, or special session, at which a quorum is present, upon the affirmative vote of a majority of the Lot owners present and voting at that meeting. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject service or materials.

## **VII. WATER SUPPLY**

### **1. Water Decree and Augmentation Plan.**

A. Decree/Summary. The Subdivision shall be subject to the obligations and requirements as set forth in the April 13, 2007 Judgment and Decree affirming the March 23, 2007 Findings of Fact and Ruling of Referee granting underground water rights and approving a plan for augmentation, as entered by the District Court for Water Division 1, State of Colorado, in Case No. 06CW100 (consolidated with Division 1 Case No. 06CW20), as recorded at Reception No. \_\_\_\_\_ of the El Paso County Clerk and Recorder, which is incorporated by reference (“Augmentation Plan” or “Water Decree”,

**Exhibit C).** The Augmentation Plan concerns the water rights and water supply for the Subdivision and creates obligations upon the Association, and the Lot owners, which run with the land. The water supply for the Subdivision shall be by individual wells to the non-tributary Dawson aquifer, under the Augmentation Plan. The Augmentation Plan contemplates that each Lot owner will be responsible for obtaining a permit from the Colorado Division of Water Resources and drilling an individual well for water service to their residence and lot to the shall Dawson aquifer and use of such well as consistent with the terms of the Augmentation Plan, including wastewater treatment through a non-evaporative individual septic disposal system (“ISDS”). Lot owners will be the owners of the Dawson aquifer underlying each of their lots (and a portion of the nontributary Denver aquifer, and the deeper nontributary Arapahoe and Laramie-Fox Hills aquifers, as alternative water sources), while the Association will own the plan for augmentation, be responsible for reporting and administration based on pumping records provided by each Lot Owner, and eventually for replacement of any injurious post-pumping depletions requiring construction of an “augmentation well(s)” to the nontributary Denver aquifer at such time as all Dawson aquifer pumping ceases.

2. Water Rights Ownership.

A. Declarant will transfer and assign to the Association all right, title and interest in the Augmentation Plan and water rights thereunder, except as set forth below. Those water rights assigned include a portion of the ground water in the nontributary Denver aquifer (at least 1,910 acre-feet), as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions.

B. Declarant will transfer and assign to each Lot owner a proportionate prorata-per-acre interest in the not-nontributary Dawson aquifer, as well as a portion of the nontributary Denver aquifer not reserved to the association, and the nontributary Arapahoe and Laramie-Fox Hills aquifers, not transferred and assigned to the Association, as adjudicated in the Water Decree as the physical source of supply for each Lot, and reserve water for each Lot owner. The Dawson aquifer well on each Lot shall be augmented per the Augmentation Plan as administered by the Association.

C. The Declarant will further assign to the Association all obligations and responsibilities for compliance with the Augmentation Plan, including monitoring, accounting and reporting obligations. The Association shall assume and perform these obligations and responsibilities. By this assignment to the Association, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Augmentation Plan. Such conveyance shall be subject to the obligations and responsibilities of the Augmentation Plan and said water rights may not be separately assigned, transferred or encumbered by the Association, nor by the Lot owners. The Association shall maintain such obligations and responsibilities in perpetuity, unless relieved of such augmentation responsibilities by decree of the Water Court, or properly entered administrative relief.

D. Each Lot owner's water rights in the not-nontributary Dawson aquifer underlying their respective Lot shall remain subject to the Augmentation Plan, and shall, transfer automatically upon the transfer of title to each Lot as an appurtenance, including the transfer by the Declarant to the initial owner of a Lot, whether or not separately deeded. The ground water rights in the Dawson aquifer subject to the Augmentation Plan cannot and shall not be severable from each respective Lot, and each Lot owner covenants that it cannot sell or transfer such ground water rights to any party separate from the conveyance of the Lot.

E. A portion of the nontributary Denver Basin groundwater in the nontributary Denver aquifer, and a *pro rata*-per-acre portion of the groundwater in the nontributary Arapahoe and Laramie-Fox Hills aquifer underlying each Lot and not reserved and assigned to the Association for augmentation of any injurious post-pumping depletions, consistent with the Augmentation Plan, are likewise to be deeded, assigned and transferred to the overlying Lot owner on a *pro rata*-per-acre basis, and may be used in said Lot owner's sole and complete discretion, subject to the terms and conditions of these Declarations and the Augmentation Plan.

F. The Dawson aquifer water rights conveyed to each Lot Owner, and the nontributary Denver aquifer water rights conveyed to the Association, as described in this Section VII., and return flows therefrom, shall not be sold, leased or otherwise used for any purpose inconsistent with the Augmentation Plan decreed in Case No. 06CW100 and these Covenants, and shall not be separated from the transfer of title to the land, or in the case of the nontributary groundwater from ownership by the Association, and shall not be separately conveyed, bartered or encumbered.

### 3. Water Administration.

A. Each Lot owner shall limit the pumping of each individual Dawson aquifer well per Lot to a maximum of 1.0 acre-feet annually, consistent with the Augmentation Plan. Each Lot owner shall further ensure that the allocations of use of water resulting from such pumping as provided in the Augmentation Plan is maintained, as between in-house, irrigation, stock water and other allowed uses. Each Lot owner shall use non-evaporative septic systems in order to ensure that return flows from such systems are made to the stream system to replace depletions during pumping and shall not be sold, traded or used for any other purpose. The Association, as the owner of all obligations and responsibilities under the Augmentation Plan, shall administer and enforce the Augmentation Plan as applies to each Lot owner's respective Lot and pumping from individual Dawson aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources under the Augmentation Plan and taking all necessary and required actions under the Augmentation Plan to protect and preserve the ground water rights for all Lot owners. Each Lot owner, and the Association, have the right to specifically enforce, by injunction if necessary, the Augmentation Plan against any other Lot owner, or the Association, for failing to comply with the Lot owner's and/or Association's respective obligations under the Augmentation Plan, including the enforcement of the terms and conditions of well permits issued

pursuant to the Augmentation Plan, and the reasonable legal costs and fees for such enforcement shall be borne by the party against whom such action is necessary. The use of the not-nontributary Dawson ground water rights owned by each Lot owner is restricted and regulated by the terms and conditions of the Augmentation Plan and these Declarations, including, without limitation, that each Lot owner is subject to the maximum annual well pumping of 1.0 acre-feet. Failure of a Lot owner and/or the Association to comply with the terms of the Augmentation Plan may result in an order from the Division of Water Resources under the Augmentation Plan to curtail use of ground water rights.

B. Each Lot owner shall promptly and fully account to the Association for total pumping from the individual well to the not-nontributary Dawson Aquifer on each Lot, including for any irrigation, stockwater or other permitted/allowed uses as may be required under the Augmentation Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division or Water Resources, as may be advised by the Association. The Association shall provide the Division of Water Resources with integrated accounting for pumping of all not-nontributary individual Dawson aquifer wells on each Lot on an annual basis, unless otherwise reasonably requested by the Division of Water Resources.

C. At such time as construction of Denver aquifer well is required for replacement of post-pumping depletions under the Augmentation Plan, the Association shall be responsible for all cost and expense in the construction of said well, as well as all reasonable reporting requirements of the Division of Water Resources associated therewith. The Association shall have authority to impose a reasonable fee or assessment upon all Lot owners in advance of construction so as to ensure sufficient funding is available to meet all post-pumping depletion replacement obligations, consistent with the terms and conditions of these Declarations.

#### 4. Well Permits.

A. Each Lot Owner shall be responsible for obtaining a well permit for the individual well to the not-nontributary Dawson aquifer for provision of water supply to their respective Lot, or in such Lot owner's discretion, to the nontributary Denver, Arapahoe or Laramie-Fox Hills aquifers, to the extent quantities deeded to such Lot owner therein are sufficient for such Lot owner's needs. Nontributary Denver, Arapahoe or Laramie-Fox Hills aquifer individual wells are not subject to the Augmentation Plan administration provisions as described herein and in the Augmentation Plan decree, but shall be bound by terms and conditions of the permit therefore and the applicable rules and regulations of the Colorado Division of Water Resources. All Dawson aquifer wells shall be constructed and operated in compliance with the Augmentation Plan, the well permit obtained from the Colorado Division of Water Resources, and the applicable rules and regulations of the Colorado Division of Water Resources. The costs of the construction, operation, maintenance and repair of such individual well, and delivery of water therefrom to the residence located on such Lot, shall be at each Lot owner's respective expense. Each Lot owner shall comply with any and all requirements of the Division of Water Resources to log their well, and shall install and maintain in good

working order an accurate totalizing flow meter on the well in order to provide the diversion information necessary for the accounting and administration of the Augmentation Plan. It is acknowledged that well permits, and individual wells, may be in place on some of the Lots at the time of sale, and by these Declarations no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

B. The Association shall be responsible for obtaining any well permits, rights and authorities necessary for the construction of wells to the nontributary Denver aquifer for such wells as must be constructed for purposes of replacing any injurious post-pumping depletions, consistent with the Augmentation Plan, and such well(s) shall not be constructed unless and until such post-pumping depletions must be replaced. The Association shall comply with any and all requirements of the Division of Water Resources to log such wells, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide all necessary accounting under the Augmentation Plan.

C. No party guarantees to the Lot owners the physical availability or the adequacy of water quality from any well to be drilled under the Augmentation Plan. The Denver Basin aquifers which are the subject of the Augmentation Plan are considered a nonrenewable water resource and due to anticipated water level declines the useful or economic life of the aquifers' water supply may be less than the 100 years allocated by state statutes or the 300 years of El Paso County water supply requirements, despite current groundwater modelling to the contrary.

5. Compliance. The Lot owners and the Association, respectively, shall perform and comply with all terms, conditions, and obligations of the Augmentation Plan, and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources pursuant to the Augmentation Plan, as well as all applicable statutory and regulatory authority.

6. Amendments. No changes, amendments, alterations, or deletions to this Section VII of this Declaration may be made which would alter, impair, or in any manner compromise the Augmentation Plan, or the water rights of the Lot owners without the written approval of said parties, El Paso County, and from the Water Court.

7. El Paso County Enforcement. El Paso County may enforce the provisions regarding the Augmentation Plan as set forth in this Declaration, should the Lot owners and/or Association fail to adequately do so.

### **VIII. INSURANCE/CONDEMNATION**

1. Association Insurance. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able

companies duly authorized to do business in the State of Colorado. If such insurance is not reasonably available, or the Association determines that any insurance described in this paragraph will not be maintained, the Association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot owners and first lien Security Interest holders at their respective last known addresses. Nothing herein shall be deemed to require that the Association maintain any insurance and such determination shall be made by the Association in its sole discretion.

2. Property Insurance Coverage. Association property insurance will cover:

A. The facilities, consisting of (1) all Common Elements; and (2) all personal property owned by the Association, if any.

B. The community insurance will be for an amount (after application of any deductions) equal to 100 percent of the community facilities' actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association will be insured for an amount equal to its actual cash value.

C. The Association is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the community facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

D. The maximum deductible for insurance policies shall be as determined by the Association and shall be a Common Expense, unless caused by the act or omission of a Lot owner and assessed in accordance with this Declaration.

E. The insurance shall afford protection against "all risks" of direct physical loss commonly insured.

F. Insurance policies required by this paragraph should further provide that:

i. The insurer waives the right to subrogation under the policy against a Lot owner or member of the household of a Lot owner.

ii. An act or omission by a Lot owner, unless acting within the scope of the Lot owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.

iii. If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner that covers the same risk covered by the policy, the Association's policy provides primary insurance.

iv. Losses to be adjusted with the Association.



v. Insurance proceeds to be paid to any insurance trustee designated in the policy for that purpose and otherwise to the Association, but, in any case, the proceeds are to be held in trust for each Lot owner and the Lot owner's mortgagee.

vi. The insurer may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, to each Lot owner, and to each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

3. Hazard Insurance for Common Elements. To the extent commercially available, the Association shall obtain hazard insurance covering loss, damage, or destruction by fire or other casualty to any insurable improvements installed or made to any Common Element and other property of the Association.

4. Association Liability Insurance. The Association shall obtain public liability and property damage liability insurance covering any Common Element, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of vehicles or equipment on behalf of the Association. This insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of, or in connection with, the use, ownership, or maintenance of the Common Elements and the activities of the Association. Insurance policies carried pursuant to this Section shall provide that:

A. Each Lot owner is an insured person under the policy with respect to liability arising out of the Lot owner's membership in the Association;

B. The insurer waives the right to subrogation under the policy against a Lot owner or member of the household of a Lot owner;

C. An act or omission by a Lot owner, unless acting within the scope of the Lot owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;

D. If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and

E. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Lot owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

5. Directors' Personal Liability Insurance. The Association shall obtain directors' personal liability insurance to protect the directors, officers, members, and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

6. Insurance Premium. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

7. Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

8. Lot Owner Policies. An insurance policy issued to the Association does not preclude, nor require, Lot owners from obtaining insurance for their own benefit.

9. Other Insurance. The Association shall carry such other insurance as may be required by any first lien Security Interest holder and may carry other insurance that the Association considers appropriate to protect the Association.

10. Restoration of Common Elements.

A. Duty to Restore. All or any portion of the Community for which insurance carried by the Association is in effect, must be repaired or replaced promptly by the Association unless the Community is terminated, or repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety.

B. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

C. Plans and Specifications. The damaged property requiring restoration or repair must be repaired and restored in accordance with either the Plat or other plans and specifications that have been approved by the Association, a majority of Lot owners, and 51 percent of first lien Security Interest holders.

D. Insurance Proceeds. The Trustee or, if there is no Trustee, the Association, acting by appointed representative, shall hold any insurance proceeds in trust for the Association, Lot owners, and lien holders as their interests may appear. Subject to the provisions of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Property. The Association, Lot owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the property has been completely repaired or restored or unless the Community is terminated.

11. Replacement of Less Than Entire Property.

A. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Community.

B. Except to the extent that other persons will be distributes, the remainder, if any, of the proceeds must be distributed to each Lot owner or lien holder, as their interests may appear, in proportion to the Common Expense assessment percentages of all the Lots.

12. Certificates By Association. The Trustee, if any, may rely on the following certifications in writing made by the Association:

A. Whether or not damaged or destroyed property is to be repaired or restored; and

B. The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

13. Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Lot owners or mortgagees, then the Association, and the Trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the records from the date of the recording of the original Declaration, stating the names of the Lot owners and the mortgagees.

14. Association as Attorney-in-Fact; Damage and Destruction. All of the Lot owners irrevocably constitute and appoint the Association as their attorney-in-fact, for them and in their names, respectively, to deal with the Community upon its destruction, repair, or obsolescence as in this Declaration provided. As attorney-in-fact, the Association, by its president and secretary, acting pursuant to authorization from the Association, shall have full and complete authority, right, and power to receive the proceeds of any insurance in the names of the Lot owners or the Association, and to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of a Lot owner that is necessary and appropriate to exercise the powers in this declaration granted.

15. Damage to or Destruction on Lots. In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall communicate to the Board of Directors (within 90 days of the incident) plans to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return

it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

## **IX. GENERAL PROVISIONS**

1. Persons and Lots Subject to Declarations, Rules, Bylaws. All Lot owners, tenants, occupants of dwellings on Lots, and, to the extent they own Lots, mortgagees and the Declarant, shall comply with this Declaration, and any rules or bylaws subsequently enacted by the Association, including any such rules incorporated within the Associations' Articles of Incorporation and shall be subject to all rights and duties under the Governing Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of the Governing Documents are accepted and ratified by that Lot owner, tenant, mortgagee, or occupant. All provisions recorded in the Governing Documents are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

2. Amendment of Declarations. Except as expressly mandated by applicable law, and except as limited by express provisions herein, these Declarations and the Plat may be amended only by vote or agreement of at least 67 percent of the Unit Owners. For purposes of this Paragraph IX.2, Declarant shall be deemed an owner of each Lot until such time as such Lot(s) are transferred to a third party, and Declarant shall have one vote for each lot remaining in Declarant's ownership.

A. Amendment of Declaration by Declarant. Until such time as Declarant has conveyed any Lots to a third party, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. Declarant reserves the right to unilaterally amend this Declaration in all circumstances permitted by law and which do not conflict with applicable statutes, rules or decrees. Notwithstanding anything contained within this Declaration, and to the extent permitted by law, if Declarant determines that any amendments to this Declaration shall be necessary in order for existing or future mortgages or other security instruments to be acceptable applicable authorities, then Declarant shall have and hereby specifically reserves the right and power to make, execute and record any such amendments without obtaining approval of Lot owners or mortgagees (or any percentage thereof).

B. Recordation of Amendments. Each amendment to this Declaration must be recorded in the records of the Clerk and Recorder for El Paso County, Colorado, and the amendment is effective only upon recording.

C. Unanimous Consent. Except to the extent expressly permitted or required by other provisions of this Declaration, an amendment may not create or

increase the number of Lots, change the boundaries of a Lot, change the vested property interests of a Lot or Lot owner, or the uses to which a Lot is restricted except by unanimous consent of the Lot owners.

D. Execution of Amendments. An amendment to this Declaration required to be recorded, as set forth herein, by the Association, which has been adopted in accordance with this Declaration, must be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

E. Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Paragraph IX.2 may not be brought more than one year after such amendment is recorded.

3. Termination. Termination of the Association and Community and voiding of this Declaration may be accomplished by unanimous consent of the Lot owners; however, the covenants and restrictions herein regarding compliance with the Augmentation Plan shall not terminate unless the requirements of the Augmentation Plan are also terminated by order of the appropriate water court and a change of water supply is approved by El Paso County.

4. Enforcement. The Association, as well as any aggrieved Lot owner, is hereby granted a right of action against any Lot owner who fails to comply with the provisions of the Documents or to comply with lawful decisions made by the Association. Each and every Lot owner is also granted a similar right of action against the Association. In any action maintained under this paragraph, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

5. Actions of Enforcement. In the event that a dispute regarding an alleged violation of this Declaration that cannot be resolved through discussion and negotiation of the parties, or subsequently by mediation, enforcement shall be by proceedings at law or in equity against any person(s) violating or attempting to violate any provision of this Declaration, including actions to restrain or enjoin such violation, and to recover damages. Venue shall be proper in the District Court for El Paso County, Colorado. The Lot owners and the Association shall abide by any injunctions so entered, without necessity of bond, in order to simplify judicial proceedings to remedy violations of this Declaration. In addition, if a judicial action is necessary to prohibit or correct a violation of this Declaration, the prevailing party shall be entitled to recovery of all costs of the enforcement proceeding, including reasonable attorney's fees.

6. Terms of Covenants and Severability. This Declaration shall run with the land and shall remain in full force and effect until amended or terminated, in whole or part, by the owners of the entirety of the Subdivision (*i.e.* all Lot owners and the Association), and filed for record with the Clerk and Records of El Paso County. If any portion of this Declaration is held invalid or becomes unenforceable, the other portions of this Declaration shall not be affected or impaired but shall remain in full force and effect.

7. Captions. The captions contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Declaration or the intent of any provision thereof.

8. Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of this Declaration so requires.

9. Waiver. No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

10. Invalidity. The invalidity of any provision of this Declaration does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is invalid, all of the other provisions of this Declaration shall continue in full force and effect.

11. Conflict. This Declaration is not intended to comply with the requirements of the Act, other than C.R.S. §§38-33.3-105 to 38-33.3-107, as the Community is exempt from all other provisions of the Act. If there is any conflict between this Declaration and C.R.S. §§38-33.3-105 to 38-33.3-107, or any other applicable statutes, the provisions of such statutes shall control.

12. No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association or its agents or employees in connection with any portion of the Community, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the Community, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in this Declaration. ANY AND ALL WARRANTIES WITH RESPECT TO ANY PORTION OF THE COMMUNITY OR ANY IMPROVEMENTS THEREON, EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW (INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY SPECIFICALLY DISCLAIMED. THE ASSOCIATION DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSON OR SUBDIVISION WITHIN THE SUBDIVISION. BY ACCEPTING A DEED TO A LOT, AN OWNER AGREES THAT THE ASSOCIATION IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED AND MADE MANDATORY IN THIS DECLARATION AND THE ASSOCIATION DOCUMENTS, AND IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS WITHIN THE COMMUNITY. To the greatest extent permitted by applicable law, the Association, the Board of Directors and its members, any member, agent, employee, officer, director, or representation of any of them shall not be liable to any person or entity for any action or failure to act under this Declaration if the action or failure to act was in good faith and without malice.

