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MASTER DECLARATION

FOR

MILLER RANCH



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## MASTER DECLARATION

### FOR

### MILLER RANCH

THIS MASTER DECLARATION FOR MILLER RANCH (this "Declaration"), dated as of October \_\_, 2003, shall be effective upon recordation and is made by BERRY CREEK LIMITED LIABILITY CO., a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached hereto and made part of this Declaration by this reference (the "Property"), and Declarant and other third parties are the owners of additional real property located in Eagle County, Colorado, more particularly described on Exhibit B (the "Expansion Property"). Declarant hereby makes the following grants, submissions, and declarations:

#### ARTICLE I IMPOSITION OF COVENANTS

Section 1.1 Purpose. The purpose of this Declaration is to create a residential planned community (the "Project") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, within the Property.

Section 1.2 Intention of Declarant. Declarant intends to develop the Property as a residential community, for the benefit of all persons residing in Miller Ranch. Declarant desires to (a) protect the value and desirability of the Property, (b) to own and operate certain common amenities and properties for the benefit of the owner(s) of the Property and the separate projects which may be formed thereon, (c) create a harmonious and attractive residential development within the Property, and to promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of Units in Miller Ranch.

Section 1.3 Number of Units. The Miller Ranch site specific approvals in effect as of the date hereof permit the development of a maximum of two hundred eighty-two (282) Residential Units and Declarant hereby reserves the right to create such residential areas. Declarant intends to develop four types of Residential Units within the Project, including single family homes, duplexes, townhomes, and condominiums. Notwithstanding the foregoing, the Miller Ranch Community Documents (as that term is hereinafter defined) has authorized zoning for three hundred fifteen (315) Residential Units and in order to allow flexibility in the operation of this Declaration in the event that the site specific approvals are revised in the future, Declarant reserves the right to create a maximum of 315 Residential Units.

Section 1.4 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, and other provisions of this Declaration below, and Declarant hereby declares that all of the Property

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shall be held, sold, conveyed, encumbered, leased, rented, occupied and improved subject to the provisions of this Declaration.

Section 1.5 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

Section 1.6 Affordable Housing Restrictions. In order to provide housing for permanent residents of the area, all of the Units will be restricted in the manners as set forth in the Affordable Housing Restrictions (defined below).

## ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration or any Supplemental Declaration, shall have the meanings designated below unless the context shall expressly provide otherwise:

Section 2.1 "Act" means the Colorado Common Interest Ownership Act as set forth in the Colorado Revised Statutes, Section 38-33.3-101, et. seq.

Section 2.2 "Affordable Housing Restrictions" shall mean the Deed Restriction Agreement for the Occupancy and Resale of Miller Ranch Housing recorded 10/24, 2003, under Reception No. B55028, in the real estate records of the Clerk and Recorder of Eagle County, Colorado and the Miller Ranch Housing Guidelines, each as supplemented and amended from time to time.

Section 2.3 "Agency" means any agency or corporation such as the Department of Housing and Urban Development, Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or Federal Housing Administration that purchases, guarantees or insures residential mortgages.

Section 2.4 "Allocated Interest" means the apportionment of voting rights of an Owner as discussed in Section 6.2 below and the apportionment of Assessments for which a Unit is responsible as discussed in Section 8.4 below. The formula used to calculate a Unit's Allocated Interest is its average site area square footage (as further allocated between Units sharing such site area) as a percentage of the aggregate site area square footage of all Units within Miller Ranch. The calculation of such formula as contained in this Declaration and in any Supplemental Declaration is final and binding upon all Owners irrespective of any later measurement of such square footages.

Section 2.5 "Assessments" means the annual, special, default and transfer Assessments levied pursuant to Article 8 below. Assessments are also referred to as a Common Expense Liability under the Act.

Section 2.6 "Building" means any building (including all fixtures and improvements contained within it) located on the Property.



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Section 2.7 "Bylaws" means the Bylaws adopted by the Master Association, as amended from time to time.

Section 2.8 "Common Area" means, to the extent of the Master Association's interest in such real property or improvements, if any, any real property or improvements within Miller Ranch (a) that are owned by the Master Association, (b) that are owned by a person or entity other than the Master Association, but in which the Master Association has rights of use or possession pursuant to a lease, license, easement or other agreement, or (c) that the Master Association is otherwise required to operate, manage, maintain or repair, together with any improvements located thereon. Declarant is legally obligated to construct landscaping, green spaces and additional similar improvements within and/or outside of the Property as required by the Community Documents. The Common Areas which Declarant anticipates may be constructed, maintained or operated by the Master Association are as follows: landscaping (including, without limitation, landscaping within the Landscaping Maintenance Area and within certain dedicated public rights-of-way serving the Property), green space, irrigation system owned by the Master Association and certain drainage improvements serving the overall Property, such areas being located both within and outside of the Property as more fully described in Section 4.2 below.

Section 2.9 "Common Expenses" means (a) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (b) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area or Landscaping Maintenance Area; (c) insurance premiums for the insurance carried under Article 12; and (d) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.10 "Community Documents" means those certain documents relating to the planned unit development for Miller Ranch covering, without limitation, the Property, such documents to include, without limitation, zoning requirements, subdivision improvement agreements, the Berry Creek/Miller Ranch PUD Sketch/Preliminary Plan, the Berry Creek/Miller Ranch PUD Guide, the Berry Creek/Miller Ranch Site Specific Development Plan For the Housing Tract D of the Berry Creek/Miller Ranch PUD and Subdivision Plans.

Section 2.11 "Condominium Unit" shall mean those Units submitted to a condominium regime pursuant to a Project Declaration.

Section 2.12 "County" means the County of Eagle, State of Colorado, the governmental entity which has the planning and zoning authority with respect to the Property.

Section 2.13 "Declarant" means Berry Creek Limited Liability Co., a Colorado limited liability company, and its successors and assigns. No party other than Berry Creek Limited Liability Co. shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real property records of Eagle County, Colorado a written assignment from Berry Creek Limited Liability Co. or a portion of such rights and privileges.

Section 2.14 "Declarant Control Period" shall have the meaning given it in Section 6.4 of this Declaration and described in Section 6.5.



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Section 2.15 "Declaration" means this Master Declaration for Miller Ranch, together with any supplement or amendment to this Declaration, recorded by Declarant in the office of the Clerk and Recorder of Eagle County, Colorado.

Section 2.16 "Design Guidelines" means the guidelines and rules published and amended and supplemented from time to time by the Design Review Board, which guidelines will be in general conformance with the Berry Creek/Miller Ranch Design Guidelines.

Section 2.17 "Design Review Board" means and refers to the Design Review Board defined in and created pursuant to Article 9 below.

Section 2.18 "Director" means a member of the Executive Board.

Section 2.19 "Duplex" means a Building containing two (2) Units, together with the two Lots related thereto.

Section 2.20 "Eligible Mortgage Holder" means a First Mortgagee or any insurer or guarantor of a First Mortgage, or any Agency, which has notified the Master Association in writing of its name and address and its status as the holder, insurer or guarantor of a First Mortgage. Such notice shall be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article 19 below, regardless of whether such Article requires notice to such party.

Section 2.21 "Executive Board" means the governing body of the Master Association, as provided in this Declaration and in the articles of incorporation and Bylaws.

Section 2.22 "Expansion Property" means the real property located in Eagle County, Colorado, more particularly described on Exhibit B attached hereto and incorporated herein by this reference, which Declarant may subject to this Declaration by one or more duly recorded Supplemental Declarations.

Section 2.23 "First Mortgage" means a Mortgage which has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens, special and governmental transfer assessments).

Section 2.24 "First Mortgagee" means the Mortgagee under a First Mortgage.

Section 2.25 "Function" means any activity, function or service required under this Declaration to be undertaken or performed by the Master Association as well as any activity, function or service otherwise undertaken or performed by the Master Association which may include, without limitation, public health and safety matters, traffic regulation, animal control functions, communications matters, enforcement function and other services or functions deemed to generally benefit Miller Ranch.

Section 2.26 "Guest" means any family member, customer, agent, employee, independent contractor, guest, invitee or Lessee of an Owner and any person or persons, entity or entities who have any right, title or interest in a Unit which is not the fee simple title to the Unit (including a



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Lessee), and any family member, customer, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.

Section 2.27 "Landscaping Maintenance Area" means the landscaped areas within those portions of each Lot generally visible from the right-of-way serving such Lot. These areas are those in which landscaping has been installed by the Declarant on individual Lots as part of the overall Miller Ranch landscaping installation as generally described below and as typically illustrated on the drawing attached as Exhibit C hereto and incorporated herein. These areas are generally described as follows:

Front Area – The portion of the Lot between the front property line and the Master Association Fence and the Building.

Side Area – The portion of a corner Lot between the side property line abutting a right-of-way and the Master Association Fence and the Building.

Rear Area – The area of the rear yard encompassing the rear yard setback, which is 4 feet from the alley right-of-way, excluding any driveway, garage and parking pad.

Section 2.28 "Lessee" means the person or persons, entity or entities which constitute the lessee under a lease of all or any part of a Unit. The term Lessee shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee, but it shall not include the Master Association or any governmental entity (which term shall include but is not limited to special districts formed pursuant to Colorado law).

Section 2.29 "Management Agreement" means the contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance and management of the Common Area or for purposes of undertaking or discharging any Function.

Section 2.30 "Managing Agent" means the person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Common Area and/or the Master Association.

Section 2.31 "Map" or "Maps" means and includes any engineering survey or surveys of the Property locating a Lot, or the Units in the respective Buildings and the Buildings on the Property depicting the floor plans of the Units, together with other drawings or diagrammatic plans and information regarding any portion of the Property as recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

Section 2.32 "Master Association" means Miller Ranch Property Owners' Association, a Colorado nonprofit corporation, and its successors and assigns. The Master Association acts through its Executive Board unless a vote of the Owners is otherwise specifically required by the Act, this Declaration or the articles of incorporation or bylaws of the Master Association.



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Section 2.33 "Master Association Documents" means the basic documents governing the Master Association, including, but not limited to, this Declaration, the articles of incorporation and bylaws of the Master Association, and any procedures, rules, regulations, or policies relating to the Master Association adopted under such documents by the Master Association or the Executive Board.

Section 2.34 "Master Association Fence" means any fence installed in parks, open space, Common Areas or individual Lots by the Declarant and maintained by the Master Association.

Section 2.35 "Maximum Rate" shall mean two percentage points greater than that rate of interest charged by a bank designated from time to time by the Executive Board to the best commercial customers of the designated bank for short-term loans and identified as the "prime rate" by such bank as of the date on which such Maximum Rate is imposed with respect to any amount payable under this Declaration, or if less, the maximum rate allowed by law.

Section 2.36 "Miller Ranch" means the entirety of the Property subject to the terms and provisions of this Declaration.

Section 2.37 "Mortgage" means any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Eagle County, Colorado, which secures financing for the construction or development of any portion of the Property or which encumbers a Unit.

Section 2.38 "Mortgagee" means any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.39 "Non-Association Amenities" means certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Property, which are privately or publicly owned and operated by persons other than the Master Association for recreational, commercial and related purposes, on a membership basis or otherwise, and shall include, without limitation, those possible facilities and amenities as described in the Community Documents and listed in Section 20.1.6 below.

Section 2.40 "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser) of a fee simple title interest in and to any Unit, excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

Section 2.41 "Party Wall" means any common wall adjoining two or more Duplex Residences and shall be deemed to include the roofing underlying the portion of the roof over, and the utility lines within a common wall. Party walls in Townhouse or Condominium Residences shall be governed by the provisions of the respective Project Declaration.

Section 2.42 "Plat" means that certain Final Plat, Miller Ranch, a Resubdivision of Tract D, Berry Creek/Miller Ranch PUD recorded January 15, 2003, at Reception No. 820378 in the office of the Clerk and Recorder of Eagle County, Colorado, as supplemented by that certain Final Plat, Miller



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Ranch Filing No. 2, a Resubdivision of Tract A and Parcel 14, Miller Ranch, recorded October 23, 2003, at Reception No. 854785, County of Eagle, State of Colorado, as amended and/or supplemented from time to time.

Section 2.43 "Project" or "Projects" means one or more Buildings, together with the Lot(s) on which such Building(s) are located and which Lot(s) are submitted to a condominium or planned community regime by a Project Declaration and, if appropriate, the associated Map.

Section 2.44 "Project Association" or "Project Associations" means the association(s), formed for the purpose of representing owners of Units within a particular Project.

Section 2.45 "Project Declaration" means each Declaration creating a Common Interest Community within the planned community created by this Declaration.

Section 2.46 "Property" means the real property subject to this Declaration.

Section 2.47 "Residence(s)" means, individually or collectively, the improvements constructed on a Lot and used for dwelling purposes.

Section 2.48 "Residential Lot" or "Lot" means, individually or collectively, any separately numbered lot(s) designated on the Plat or any Supplemental Plat for any portion of the Property, recorded in the office of the Clerk and Recorder of Eagle County, Colorado, as the same may be amended from time to time.

Section 2.49 "Residential Unit" or "Unit" means any separate fee simple interest in and to any parcel of real property subject to this Declaration which is designated for separate ownership and that may be conveyed in fee in compliance with all applicable subdivision regulations which is permitted to be used for residential purposes in the Community Documents, including the Residence located thereon, and shall include Condominium Units, Duplexes, Single Family Homes and Townhomes.

Section 2.50 "Single Family Home" means those Units that are single family residences.

Section 2.51 "Special Assessment" means an assessment levied pursuant to Section 8.6 below on an irregular basis.

Section 2.52 "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 of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, designating such party as a Successor Declarant.

Section 2.53 "Supplemental Declaration" means an instrument which subjects any part of the Expansion Property to this Declaration, as more fully provided in Article 18 below.

Section 2.54 "Supplemental Plat" means a subdivision plat or Map which depicts any part of the Expansion Property becoming subject to this Declaration through a Supplemental Declaration, as more fully provided in Article 18 below.



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3.5.4 Each Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Units as provided pursuant to Colorado Revised Statutes Subsections 39-1-103(10) and 38-33.3-105(2).

3.5.5 No Owner of a Unit shall bring any action for partition or division of the Common Area.

#### ARTICLE 4 MAINTENANCE

Section 4.1 Residence and Building Exteriors. Subject to the insurance responsibilities set forth in Article 12 below and approval of the Design Review Board, each Owner or, in the event that a Project has been established, each Project Association shall maintain the exterior of all Residences and Buildings, which shall include but shall not be limited to, painting and/or staining of the exterior (including decks and porches), and roof maintenance and repair (including snow and ice removal). The Owner or Project Association shall be responsible for window washing, the repair or replacement of broken window panes and all other exterior maintenance and repairs. Each Owner or Project Association, as is applicable, hereby covenants and agrees to maintain the Building for which it is responsible in first class condition and repair.

Section 4.2 Common Area, Landscaping Maintenance Area and Improvements. In order to maintain a uniform appearance and a high standard of maintenance of landscaping in areas visible from rights-of-way, alleyways or Common Areas within the Property, the Master Association shall maintain (a) the Common Areas, including, without limitation, all parks and open space areas as depicted on the Plat (except Parcel 14 as depicted on the Plat and the regional trail located therein) and associated Master Association Fences, landscaping, signage and lighting, if any, (b) the landscaping and Master Association Fences located in the Landscaping Maintenance Area, (c) all Common Area improvements located outside of the curbs or, if not curbed, the edge of pavement in the rights-of-way and alleys depicted on the Plat, including, without limitation, sidewalks (including snow removal and long term repair), lighting and landscaping, if any (all improvements comprising the curbs or located inside the curbs or edge of pavement in such rights-of-way such as the roadway or traveled lane of the alley itself shall not be the responsibility of the Master Association), (d) those drainage and storm sewer improvements as are or may be subject to an easement benefiting the Master Association and facilitating the drainage from Tract D to Tract C, which improvements may include, without limitation, ponds, swales and piping, and (e) the landscaping and entryway lighting located within the two landscaped islands within Miller Ranch Road as depicted on the drawing attached hereto as Exhibit D. However, the Master Association shall not maintain any other areas of the Property, including landscaping on Lots other than within the Landscaping Maintenance Area. Each Owner or, if applicable, each Project Association shall be responsible for maintaining the Lots, other than those portions within the Landscaping Maintenance Area, and maintaining and keeping same in good order and repair. Furthermore, notwithstanding the enumerated Master Association responsibilities in this Section 4.2, each Owner or, if applicable, each Project Association shall also maintain all sidewalks and driveways within the Owner's Lot or the Project, as applicable. The maintenance provided under this Section shall include snow removal services. The Master Association may in its discretion provide irrigation to the landscaping within the Landscaping



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Maintenance Area, Common Areas and other landscaped areas described herein as the responsibility of the Master Association, and shall provide the utilities necessary for the maintenance and upkeep of such landscaping. The Master Association shall also provide the utilities necessary for the operation of the lighting for which the Master Association is responsible. The maintenance provided by the Master Association under this Section shall be performed at such time and in such a manner as the Master Association shall determine.

Section 4.3 Master Association's Right to Grant Owner's Maintenance Area. The Master Association reserves the right to grant the maintenance responsibility of the Landscaping Maintenance Area on each Unit to the Unit Owner or, if applicable, to the Project Association, and the Owner or Project Association is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner among the same type of Units. Furthermore, the Master Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owners and Project Associations.

Section 4.4 Special Easement. The Master Association and the Executive Board and their respective representatives are hereby granted a nonexclusive easement to enter upon and use the Lot or Project as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 4, including, without limitation, the Landscaping Maintenance Area.

Section 4.5 Maintenance Contract. The Master Association or Executive Board shall employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Master Association to maintain the Common Area and Landscaping Maintenance Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 4.6 Owner's Responsibility. Except for those maintenance functions specifically assumed by the Master Association under this Declaration or by the Project Association under the Project Declaration, an Owner shall be responsible for maintaining all portions of the Owner's Unit. Notwithstanding the foregoing sentence, the Owner shall not be responsible for maintaining the Landscaping Maintenance Area, unless modified by Section 4.3, although the Owner shall be responsible for the maintenance and upkeep of all drainage improvements and for proper drainage from such Owner's Lot. The Master Association shall have the right and power to prohibit on a Unit any storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Area. No Owner shall make any addition or other alteration to any portion of the Landscaping Maintenance Area or a Residence or Building without the express consent of the Design Review Board, as more fully discussed in Article 9.

Section 4.7 Owner's or Project Association's Failure to Maintain or Repair. Except for the functions specifically undertaken by the Master Association, all Owners are expected to maintain their Units, and all Project Associations are expected to maintain their Projects, in accordance with



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the standards of quality typical within Miller Ranch. In the event that a Unit or Project and the improvements and landscaping thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion lies with the Owner or Project Association, as applicable, or in the event that the improvements or landscaping that are insured by the Owner or Project Association are damaged or destroyed by an event of casualty and the Owner or Project Association, as applicable, does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Master Association, after notice to the Owner or Project Association, as applicable, and with the approval of the Executive Board, shall have the right to enter upon the Unit or Project to perform such work as is reasonably required to restore the Unit and/or the Buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Master Association in connection with the restoration shall be reimbursed to the Master Association by the Owner or the Project Association, as is applicable, upon demand. All unreimbursed costs shall be a lien upon the Unit(s) until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 8 of this Declaration.

Section 4.8 Community Center. Each Owner acknowledges and accepts that the Master Association may enter into a long-term lease with Eagle County for a portion of a community center building which may be developed by Eagle County on Parcel 1 as depicted on the Plat, such areas to be used for Master Association offices and/or activities. In such event, the Master Association would be responsible as part of the Common Expenses for the operation, maintenance and upkeep of such leased areas in accordance with the terms of the lease.

Section 4.9 No Master Association Liability. Neither Declarant, the Master Association, nor any of their respective directors, members, officers, agents or employees, shall be liable for any incidental or consequential damages for failure to inspect any Unit or Project or improvements or portion thereof or to repair or maintain the same. Declarant, the Master Association or any member of the general public, firm or corporation undertaking such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Unit or Project or improvements or portion thereof.

## ARTICLE 5 MASTER ASSOCIATION RIGHTS AND DUTIES

Section 5.1 Master Association Management Duties. Subject to the rights and obligations of Declarant and other Owners and Project Associations as set forth in this Declaration, the Master Association shall be responsible for the administration and operation of the Property and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Area and landscaping within the Landscaping Maintenance Area (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Master Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 8.5 below, prior approval of the Owners shall not be required in order for the Master Association to pay any such expenses, costs, and fees.



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**Section 5.2 Right to Make Rules and Regulations.** The Master Association shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable within Miller Ranch with respect to any Common Area or Function, and to implement the provisions of this Declaration or other Master Association Documents, including but not limited to, rules and regulations to regulate use of any and all Common Area in order to assure compliance with the Community Documents or to protect the natural features thereof or the interests of all Owners and Guests; to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to protect wildlife; to regulate signs; to regulate weed and pest control on property within Miller Ranch; to promote the general health, safety and welfare of persons residing, visiting and doing business within Miller Ranch; and to protect and preserve property and property rights. All rules and regulations shall comply with the Master Association Documents, the Community Documents, and other applicable land use restrictions for Miller Ranch. The rules and regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Units, Projects, Neighborhoods, Owners, Lessees, Guests or members of the general public. At its own initiative or upon the written request of any Owner or Project Association (if the Master Association determines that further action by the Master Association is proper) and subject to the hearing procedures set forth in Section 4.14 of the Bylaws. The Master Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from the Common Area or from enjoyment of any Functions, or otherwise. With respect to violations of parking regulations or of other rules and regulations that require an immediate remedy, the Master Association shall have the right to remove vehicles in violation or take other action to remedy the violation without first implementing the hearing procedures. Each Project Association, Owner, Lessee, Guest and member of the general public shall be obligated to and shall comply with and abide by such rules and regulations and pay such fines or penalties upon failure to comply with or abide by such rules and regulations, and such unpaid fines and penalties shall be enforceable as a default Assessment in accordance with Section 8.9.

**Section 5.3 Payments to Working Capital Account/Reserves.** In order to provide the Master Association with adequate working capital funds, the Master Association may collect and deposit into a segregated fund at the time of the sale of each Unit an amount equal to three months of the then-current monthly assessment payments attributable to such Unit. Declarant is prohibited from using the working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits during the period of Declarant control. Such payments to this fund shall not be considered advance payments of annual Assessments. The working capital deposit shall be returned to each Owner upon the sale of his Unit, provided that the new purchaser of the Unit has deposited the required working capital deposit with the Master Association. The Master Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, adequate reserve accounts for maintenance, repair, or replacement of the Common Area or the Landscaping Maintenance Area that must be replaced on a periodic basis. If not already held by the Master Association, the reserve account(s) shall be transferred to the Association for deposit to a segregated fund upon the termination of the period of Declarant control.

**Section 5.4 Taxes.** The Master Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any



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governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with the Common Area or Functions.

Section 5.5 Right to Dispose of Common Area; Third Party Rights in Common Area. Subject to Subsection 5.8.7 below, the Master Association shall have the full power and authority to sell, lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Area provided that such action does not result in a violation of the Community Documents and provided that the Master Association obtains the prior written consent of the County prior to the transfer of any Common Area. The Master Association shall be entitled to grant easements to third parties and take other actions which do not constitute a transfer in fee of a Common Area. The Master Association shall be entitled to contract with third parties, including, without limitation, other residential or recreational associations or individuals, allowing such persons the use and enjoyment of all or a portion of the Common Area under such terms and for such charges as may be acceptable to the Executive Board.

Section 5.6 Governmental Successor. Subject to applicable provisions of the Act, any Common Area and any Function may be turned over to a governmental or quasi-governmental entity including any special district or metropolitan district which is willing to accept and assume the same upon such terms and conditions as the Master Association shall deem to be appropriate.

Section 5.7 Records. The Managing Agent or the Executive Board, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Area and Landscaping Maintenance Area and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees, as well as insurers and guarantors of First Mortgages, may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board, including, but not limited to, the Association's audited financial statements for the immediately preceding fiscal year, if required, which must be made available within one hundred twenty (120) days of the Association's fiscal year end, at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including current copies of this Declaration, the articles of incorporation and the bylaws of the Association, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner, prospective purchaser of a Residential Unit, or Mortgagee and any insurer or guarantor of a First Mortgage at all times during convenient weekday business hours.

Section 5.8 Implied Rights of the Master Association. The Master Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

5.8.1 adopt and amend the bylaws and rules and regulations of the Master Association;

5.8.2 adopt and amend budgets for revenues, expenditures and reserves and collect Assessments, including, without limitation, Assessments for Common Expenses, from Owners;



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5.8.3 hire and terminate Managing Agents and other employees, agents and independent contractors. The Managing Agent shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Managing Agent of any duty, power or Function so delegated by written instrument executed by or on behalf of the Executive Board;

5.8.4 institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Miller Ranch

5.8.5 make contracts and incur liabilities;

5.8.6 regulate the use, maintenance, repair, replacement and modification of the Common Area;

5.8.7 acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; provided, however, that the fee interest of any Common Area may not be conveyed or subjected to a security interest unless (a) such action receives approval of Owners holding eighty percent (80%) of the total voting interest in the Master Association or any greater level of approval if required by the Act; (b) such action is evidenced by a written agreement, or a written ratification of an agreement, executed in the same manner as a deed by the required number of Owners; and (c) such action does not deprive any Unit of its rights of ingress, egress and support;

5.8.8 impose and receive any payments, fees or charges for the use, rental or operation of Common Area;

5.8.9 impose charges for late payments of Assessments, recover reasonable attorney's fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Master Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard pursuant to the hearing procedures set forth in Section 4.14 of the Bylaws, levy reasonable fines and penalties for violations of the Master Association Documents;

5.8.10 impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

5.8.11 provide for the indemnification of the Master Association's officers and directors and maintain directors' and officers' liability insurance;

5.8.12 assign its right to future income, including without limitation, its right to receive Assessments (by way of example and not limitation, the Master Association may assign its rights to receive transfer Assessments to secure financing for improvements to the Common Area or performance of Functions);

5.8.13 obtain and pay for legal, accounting and other professional services;

5.8.14 perform any Function by, through or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable; and



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5.8.15 enjoy and exercise any other power or authority which similar associations may now or hereafter enjoy or exercise in the state of Colorado.

Section 5.9 Master Association and Community Documents. Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Master Association Documents and the Community Documents. The obligations, burdens and benefits of membership in the Master Association touch and concern the Property and are, and shall be, covenants running with each Unit for the benefit of all other Units and the Common Area.

Section 5.10 Indemnification. The Master Association shall be obligated to and shall indemnify Declarant and hold it harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements, arising with respect to any operations of the Master Association or any of the Common Area or any Functions undertaken by the Master Association pursuant to this Declaration.

Section 5.11 Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Area is caused through or by the negligent or willful act or omission of an Owner or an Owner's Guest or Lessee, or by any Project Association, then the expenses incurred by the Master Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner or, in the case of a negligent or willful act or omission of a Project Association, then of all Owners of Units within that Project; and, if an Owner fails to repay the expenses incurred by the Master Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses shall automatically become a default Assessment determined and levied against such Unit, enforceable by the Master Association in accordance with Sections 8.9, 8.10 and 8.11 below.

Section 5.12 Enforcement of Master Association Documents. The Master Association or any aggrieved Owner or Project Association may take judicial action against any Owner or Project Association to enforce compliance with the rules and regulations of the Master Association and with the other provisions of the Master Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law. In addition, at its own initiative or upon the written request of any Owner or Project Association (if the Master Association determines that further action by the Master Association is proper) and subject to the hearing procedures set forth in Section 4.14 of the Bylaws, the Master Association may provide for enforcement of the Master Association Documents through reasonable and uniformly applied fines and penalties pursuant to the rules and regulations of the Master Association, through exclusion of violators from the Common Area or from enjoyment of any Functions, or otherwise. Each Project Association, Owner, Lessee, Guest and member of the general public shall be obligated to and shall comply with and abide by the Master Association Documents and pay such fines or penalties upon failure to comply with or abide by such Master Association Documents, and such unpaid fines and penalties shall be enforceable as a default Assessment in accordance with Section 8.9.

Section 5.13 Cooperation with Other Associations. The Master Association may contract or cooperate with a Project Association or with other homeowners' associations, metropolitan



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districts or entities as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Master Association or such other organizations, for the benefit of Owners and their Lessees and Guests. The costs associated with such efforts by the Master Association (to the extent not chargeable to other organizations) shall be a Common Expense.

Section 5.14 Assistance to Project Associations. The Executive Board may assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations and other documents governing the applicable Project, and the Master Association may cooperate with each Project Association so that each of those entities may most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time the Master Association and the Project Associations may use the services each of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Master Association for the Owners of Units in the particular Project or by an item in the Project Association's budget which shall be collected through the assessments of such Project Association and remitted to the Master Association. If a Project Association fails, neglects or is unable to perform a duty or obligation required by its Project Declaration or other Project documents, then the Master Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Master Association may charge the Project Association a reasonable fee for the performance of such functions.

Section 5.15 LIMITATION OF LIABILITY OF MASTER ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE MASTER ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA, AND EXCEPT TO THE EXTENT COVERED BY MASTER ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 12, THE MASTER ASSOCIATION SHALL NOT BE LIABLE TO OWNERS OR THE PROJECT ASSOCIATIONS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THE COMMON AREA TO BE MAINTAINED AND REPAIRED BY THE MASTER ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS OR THE PROJECT ASSOCIATIONS.

Section 5.16 No Right of First Refusal. This Declaration does not create any right of first refusal with respect to a Unit.

## ARTICLE 6 MEMBERSHIP IN MASTER ASSOCIATION

Section 6.1 Master Association Membership. Every Owner of a Unit shall be a member of the Master Association. No Owner, whether one or more persons, shall have more than one membership per Unit owned, as applicable. Membership in the Master Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

Section 6.2 Classes of Membership. The Master Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit, it being understood and agreed that the discussion of different categories of



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Owners (i.e., Owners of Condominiums, Townhomes, Single Family Homes or Duplexes) is for convenient reference in this Declaration and is not intended to create separate classes of ownership hereunder. Except as otherwise provided for in this Declaration, including, without limitation, Section 6.3 below, each Member shall be entitled to vote in Master Association matters pursuant to this Declaration with votes for each Unit equal to its Allocated Interest as set forth on Exhibit E attached hereto. The Master Association shall not have a vote with respect to any Unit which may be owned by it. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Master Association may exercise such voting rights subject to and in accordance with the provisions of the Bylaws. All members of the Master Association shall be entitled to vote on all matters affecting the Project.

**Section 6.3 Undeveloped Property.** An Owner of an undeveloped parcel or Lot shall not be entitled to a vote and shall not be subject to Assessments under this Declaration until such time as construction of a Unit to which such vote and assessment attaches is substantially complete. The Unit will be deemed substantially complete for all purposes under this Section on the date a temporary or conditional certificate of occupancy or any other document evidencing that the Unit may be legally occupied, whether subject to conditions or otherwise, is issued for the Unit by an appropriate governmental authority. Notwithstanding the foregoing, the Owner of an undeveloped parcel or Lot may at any time provide written notice to the Master Association of its election to be allocated votes as follows: one (1) vote with respect to each approved but undeveloped Residential Unit which may be constructed on the undeveloped parcel or Lot based upon the maximum residential density of such parcel or Lot.

**Section 6.4 Election of Directors.** During the period that Declarant is entitled to appoint the majority of the members of the Executive Board (such period, the "Declarant Control Period" as more particularly described in Section 6.5 below and the bylaws of the Master Association), the Directors shall be elected as provided in the bylaws of the Master Association without regard to the categories of Directors or the election thereof by certain categories of members as described in this Section below. Initially, the Executive Board shall be comprised of five (5) Directors. As individual Owners are elected to the Executive Board pursuant the procedures set forth herein and in Article 4 of the Bylaws, such individual Directors shall replace the Directors appointed by Declarant. After the expiration of the Declarant Control Period, the Executive Board shall initially continue to consist of five (5) persons, although the Executive Board may be expanded by amendment to the Bylaws to a maximum of seven (7) persons. At such time, the Owners of Condominium Units shall be entitled to nominate and elect one (1) member of the Executive Board, the Owners of the Duplexes and Single Family Homes shall be entitled to collectively nominate and elect one (1) member of the Executive Board, the Owners of Townhomes shall be entitled to nominate and elect one (1) member of the Executive Board and the remaining members of the Executive Board shall be nominated and elected by all Owners as at-large Directors. All members of the Executive Board shall be entitled to participate in all Master Association affairs which affect Miller Ranch.

**Section 6.5 Declarant Control.** Notwithstanding anything to the contrary provided for herein and in accordance with applicable law, Declarant shall be entitled to appoint and remove the members of the Master Association's Executive Board and officers of the Master Association as set forth in the bylaws of the Master Association, which base Declarant's control of the Executive Board on the maximum number of Units permitted to be constructed within Miller Ranch pursuant to the



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Community Documents in effect as of the date hereof. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the bylaws of the Master Association. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the office of the Clerk and Recorder for Eagle County, Colorado but, in such event, Declarant may at its option require that specified actions of the Master Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

Section 6.6 Fairness Standard. The Executive Board, the officers of the Master Association and the Master Association shall have the duty to represent the interests of Members in a fair and just manner on all matters that may affect Unit Owners. In upholding their duties, the Executive Board, the officers and the Master Association shall be held in their decisions to the standards of good faith and reasonableness with respect to such matters, taking into account the effect, if any, of the matter on Miller Ranch as a whole.

Section 6.7 Notice of Ownership. Any person, on becoming an Owner, will furnish the Secretary of the Master Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Executive Board under the bylaws or the Master Association rules, vesting the person with the interest required to make him an Owner. At the same time, the Owner will provide the Master Association with the single name and address to which the Master Association will send any notices given pursuant to the Master Association Documents. The Owner will state in such notice the voting interest in the Master Association to which the Owner believes he is entitled and the basis for that determination. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Owner will give a new written notice to the Master Association containing all of the information required to be covered in the original notice. The Master Association will keep and preserve the most recent written notice received by the Master Association with respect to each Owner.

Section 6.8 Voting by Master Association Members. To the extent a matter is required by this Declaration or the Act to be submitted to the vote of the members of the Master Association, all members shall be entitled to participate in the vote on such matter.

Section 6.9 Owner's and Master Association's Address for Notices. All Owners of an individual Unit shall have one and the same registered mailing address and, if desired by such Owners, an electronic address to be used by the Master Association or other Owners for notices, demands, and all other communications regarding Master Association matters. The Owner or Owners shall furnish such registered mailing address, and at the election such Owner or Owners a registered electronic address, to the secretary of the Master Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners or by such persons as are authorized by law to represent the interests of all Owners. Notwithstanding the foregoing, the Master Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.



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If the address of the Unit is the registered mailing address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Master Association.

All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners:

Executive Board  
Miller Ranch Property Owners' Association  
143 E. Meadow Drive  
Suite 360  
Vail, Colorado 81657

All notices given in accordance with this Section shall be sent by personal delivery or by electronic mailing, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three days after deposit in the U.S. mail. Notwithstanding the foregoing, any notice of a meeting of the Members, including, without limitation the budget ratification meeting discussed in Section 8.5 below, shall be hand delivered or sent prepaid by U.S. mail to the registered mailing address.

## ARTICLE 7 PARTY WALLS AND DUPLEX MAINTENANCE

Section 7.1 Joint Expense. The cost of reasonable repair and maintenance of a Party Wall shall be a joint expense of the Owners of the Residences sharing such Party Wall and each such Owner shall have a perpetual easement in and to that part of the Property on which the Party Wall is located, for Party Wall purposes, including maintenance, repair, and inspection. No Owner shall alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when erected.

Section 7.2 Damage. In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, the then Owners of the Units sharing such Party Wall shall bear equally the expense to repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient and fire rating, and such Owners, their successors and assigns shall have the right to the full use of said wall so repaired and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of said wall, such negligent party shall bear the cost of repair and reconstruction to the extent such Owner's negligence caused such damage.

Section 7.3 Repairs. The Master Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring sewage, water, utilities, and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient



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and fire rating, and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural support, the sound transmission coefficient or the fire rating of the Party Wall.

Section 7.4 Association Easements. Declarant hereby grants to the Master Association and the Executive Board and their respective representatives a nonexclusive easement to enter upon and use the Property on which a Party Wall is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform under this Declaration.

Section 7.5 Maintenance. The Owner of one Lot sharing a Duplex Building shall not unreasonably affect the value of the other Lot sharing such Building such as by poor maintenance and upkeep outside, and both Owners shall make all reasonable efforts to preserve a harmonious common appearance of the Lots. To the extent that the two (2) Owners sharing the single Duplex Building share certain improvements, including, without limitation, the roof of the Building, a common driveway and/or other joint improvements other than the Party Wall (the "Joint Maintenance Area"), such two (2) Owners shall share equally all expenses related to the reasonable maintenance and repair of the Joint Maintenance Area. Unless otherwise agreed mutually by the Owners, the Owners shall use a single contractor to maintain the Joint Maintenance Area, regardless of ownership of property located within the Joint Maintenance Area. Replacement or improvement of the Joint Maintenance Area may be required from time to time and shall be undertaken upon the unanimous agreement of the Owners who shall share all expenses equally. Maintenance, repair or improvement of all driveway areas of the Lots other than the portion shared by the two (2) Owners shall be the responsibility of the Owner of the Lot on which the driveway area is located.

Section 7.6 Common Utilities. Common utility or service connections, common facilities or other common equipment and property, if any, shall be owned as tenants in common, and all expenses and liabilities concerned with such property shall be shared equally among the Duplex Owners, except for any expenses or liability caused through the negligence or willful act of any owner, his family, agent or invitee, which shall be borne solely by such Owner. Notwithstanding the above, if a utility is separately metered but such service or any portion thereof is for the benefit of both Lots sharing a Duplex Building, then the cost of such service shall be equitably adjusted between the two (2) Owners.

Section 7.7 Owner Responsibility. Except as specifically set forth in this Article above, and except for the Landscaping Maintenance Area for which the Master Association is responsible, each Owner shall be solely responsible for all maintenance and repair of the exterior and interior of his Duplex, including all fixtures and improvements and all utility lines and equipment located therein and serving such Lot only.

## ARTICLE 8 ASSESSMENTS

Section 8.1 Covenant of Personal Obligation of Assessments. Declarant and every other Owner of a Unit, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, jointly and severally, with every other Owner and with the Master Association,



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and hereby does so covenant and agree to pay to the Master Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or by abandoning or leasing his Unit. The Project Associations are hereby empowered and authorized, and upon the request of the Master Association are hereby required, to levy and collect from Owners of Units within their respective Projects the Assessments owing to the Master Association as part of such Project Association's own assessment procedures and to promptly remit such Assessments collected by the Project Association to the Master Association. Assessments shall be levied against each Unit but, upon formation, each Project Association is hereby designated as the agent of each Owner of a Unit within such Project for receipt of notices of Assessments and the collection of Assessments and remittance to the Master Association.

**Section 8.2 Purpose of Assessments.** The Assessments levied by the Master Association shall be used for the purpose of promoting the health, safety, convenience, and general welfare of the Owners and the improvement and maintenance of the Common Area and the performance of Functions, and of the services and facilities located on the Common Area. Proper uses of the Assessments may include, but are not limited to, the following:

8.2.1 Protecting, repairing, replacing, renovating and maintaining any of the Common Area or other improvements maintained by the Master Association not made the responsibility of the Owners by Section 4.3 above or other provisions of this Declaration;

8.2.2 Furnishing garbage and trash pickup and water, sewer and other utility services to the Common Area;

8.2.3 Obtaining and maintaining insurance in accordance with the provisions of Article 10 below;

8.2.4 Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements, and other purposes;

8.2.5 Protecting, enhancing or restoring any environmental features or concerns within the Property;

8.2.6 Carrying out all other powers, rights, and duties of the Master Association specified in the Master Association Documents; and

8.2.7 Generally, addressing any other expenses necessary to meet the primary purposes of the Master Association.

**Section 8.3 Amount of Total Annual Assessments.** The total annual Assessments against all Units shall be based upon the Master Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such fiscal year, as approved pursuant to Section 8.5 below, which estimates may include, among other things, the costs associated with the items enumerated in Section 8.2 above, together with any other costs and fees which may reasonably be expected to be incurred by the Master Association for the benefit of



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the Owners under or by reason of the Master Association Documents. In the event of surplus funds remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves, the Executive Board may within its discretion apply the surplus funds (a) into reserves, (b) toward the following year's Common Expenses, (c) toward a credit to Owners against future Assessments or in the form of a distribution, or (d) any combination of the foregoing. All of the Residential Units shall be allocated full Assessments, subject to the provisions of Section 8.6 below, no later than sixty (60) days after Declarant conveys the first Unit in the Project to a purchaser unless otherwise permitted by the Act.

#### Section 8.4 Apportionment of Annual Assessments.

8.4.1 The total annual Assessment for any fiscal year of the Master Association shall be assessed to the Owners of the Units on the basis of each Unit's Allocated Interest as set forth on Exhibit E attached hereto.

8.4.2 Notwithstanding any terms in this Section to the contrary, (a) the Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 9, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 12; and (b) in the event a specific item in the Master Association's budget may more directly benefit a certain Project, Unit or group of Units, or Unit classification in excess of its Allocated Interest, or in the event the Master Association has provided services to such Project, Neighborhood, Units or classification in excess of those provided to other Projects, Units or classifications within the Property, the rate of Assessments levied with respect to such item or services may be modified to reflect such additional benefit at the sole and exclusive discretion of the Executive Board; provided, however, that such rate of Assessments shall be uniform within each Project, Units or classification benefited and shall not be used to circumvent the Assessment apportionment formulas as set forth in this Declaration. Notwithstanding the foregoing, nothing herein shall be construed as permitting a modification in the apportionment of Assessments related to services required under this Declaration, including, without limitation, the maintenance and care of Common Areas and the Landscaping Maintenance Area.

8.4.3 The total annual Assessments of the Master Association shall be apportioned among all Units as provided in this Section 8.4.

Section 8.5 Annual Budget. Any budget proposed to be adopted by the Executive Board shall include (i) the estimated Common Expenses, other costs and proposed capital expenditures which will be chargeable to the Master Association to fulfill its obligations under the Master Association Documents; (ii) the estimated income and other funds which will be received by the Master Association; and (iii) the estimated total amounts required to be raised by the annual, special, transfer and default Assessments to cover such costs, expenses and capital expenditures of the Master Association and to provide a reasonable reserve. Within thirty (30) days after the adoption of any proposed budget for the Master Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners of Units and shall set a date for a meeting to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting Owners holding at



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least sixty-seven percent (67%) of all votes entitled to be cast on Master Association matters reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified in accordance with this Section must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote as provided herein no less frequently than annually. The Executive Board shall levy and assess the Master Association's annual Assessments in accordance with the annual budget.

**Section 8.6 Special Assessments.** In addition to the annual Assessments authorized above, the Executive Board may at any time and from time to time determine, levy, and assess in any fiscal year (without the vote of the members of the Master Association, except as provided in the Act and in this Section below) a special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Common Area, any facilities located on the Common Area or any other improvements maintained and operated by the Master Association, specifically including any related fixtures and personal property. Any amounts determined, levied, and assessed pursuant to this Section shall be assessed to the Units in the same manner as described with respect to annual Assessments in Section 8.4 above; provided, however, that any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, Guests or Lessees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 8.5 provided that if necessary, the Master Association may adopt a new budget pursuant to Section 8.5 prior to levying a special Assessment. Such special Assessment(s) shall be due and payable as determined by the Executive Board.

**Section 8.7 Due Dates for Assessment Payments.** Unless otherwise determined by the Executive Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid monthly in advance. Annual and such Special Assessments shall be due and payable on the first day of each month without notice (except for the notices required by this Article), and shall be delivered to the Master Association at its office or to such address as the Executive Board may otherwise direct. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board may assess a "late charge" on the installment in an amount equal to ten percent (10%) of the amount outstanding or such other charge as the Executive Board may fix by rule from time to time as provided in the bylaws of the Master Association to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a quarter or other applicable payment period.

**Section 8.8 Default Assessments.** All monetary fines assessed against an Owner pursuant to the Master Association Documents, or any expense of the Master Association which is the obligation of an Owner or which is incurred by the Master Association on behalf of the Owner pursuant to the Master Association Documents and any expenses incurred by the Master Association as a result of the failure of an Owner to abide by the Master Association Documents (including without limitation attorneys fees) shall become liens against such Owner's Unit which may be



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foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to the Assessment at least thirty (30) days prior to the due date.

**Section 8.9 Lien for Assessments.** The annual, special, transfer and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 8.12 below) shall be burdens running with, and a perpetual lien in favor of the Master Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Master Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by Section 8.12 below, the name of the Owner or Owners of the Unit, and any and all other information that the Master Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Master Association, or the Managing Agent and shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado. Prior to the recording of such lien, the Master Association shall notify the Eagle County Housing Division. Any such lien notice or Eagle County notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

**Section 8.10 Effect of Nonpayment of Assessments.** If any annual, special, transfer or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the Maximum Rate on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Master Association may declare due and payable all unpaid monthly or other installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Master Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Master Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages and in accordance with the Affordable Housing Restrictions. Upon foreclosure, if title to a Unit should vest in a Non-Qualified Buyer (as defined in the Affordable Housing Restrictions), an immediate sale to a Qualified Buyer in accordance with the Affordable Housing Restrictions and the most current guidelines shall be required.

An action at law or in equity by the Master Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Master Association without foreclosing or in any way waiving the Master Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Master Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of annual and special Assessments and all default and transfer Assessments (including any such installments or Assessments arising during



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the proceedings of such action or foreclosure proceedings), any late charges under Section 8.7 above, any accrued interest under this Section, the Master Association's costs, expenses, and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Master Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Master Association's lien.

Foreclosure or attempted foreclosure by the Master Association of its lien shall not be deemed to estop or otherwise preclude the Master Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Master Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Unit, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 8.11 Successor's Liability for Assessments. Notwithstanding the Master Association's perpetual lien upon a Unit for such Assessments (which shall continue, subject to the provisions of Section 8.14 below), successors in interest to the fee simple title of a Unit, shall not be personally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit, arising prior to the date that a successor owner takes title to a Unit, unless assumed by such successor in interest or otherwise required by applicable law.

Section 8.12 Waiver of Homestead Exemption; Subordination of Master Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Master Association's perpetual lien for Assessments shall be superior to all other liens and encumbrances except the following:

8.12.1 Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

8.12.2 The lien of a First Mortgage except that the Master Association's lien is prior to the lien of a First Mortgage to the extent of an amount equal to the portion of annual Assessments based on a periodic budget adopted by the Master Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution of an action or a nonjudicial foreclosure either to enforce or extinguish the lien.

With respect to the foregoing Subsection 8.12.2, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Master Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished



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lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in Subsection 8.13.1 above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Master Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Subsections 8.13.1 and 8.13.2 above, and except as provided in Section 8.15 below, shall not affect the Master Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

**Section 8.13 Statement of Status of Assessments.** Upon fourteen (14) calendar days' written request to the Managing Agent, Executive Board or the Master Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery), a statement of the Owner's account setting forth:

8.13.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;

8.13.2 The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

8.13.3 The date of the payment of any installments of any special Assessments then existing against the Unit; and

8.13.4 Any other information deemed proper by the Master Association, including the amount of any unpaid lien created or imposed under the terms of the Declaration and collected by the Master Association as permitted under this Declaration.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Master Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Master Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Master Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.



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Section 8.14 Liens. Except for annual, special, transfer and default Assessment liens as provided in this Declaration, mechanics' liens (except as provided in Article 13 below), tax liens, judgment liens, other liens validly arising by operation of law and liens arising under Mortgages, there shall be no other liens obtainable against the Common Area.

Section 8.15 Protection of Master Association's Lien. With the approval of the Executive Board, the Master Association may protect its lien for Assessments against any Unit by submitting a bid at any sale held for delinquent taxes payable with respect to the Unit.

Section 8.16 Failure to Assess. The omission or failure of the Executive Board to fix the Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Master Association in accordance with any budget procedures as may be required by the Act.

## ARTICLE 9 DESIGN REVIEW

Section 9.1 Design Review Board and Guidelines. There is hereby established a Design Review Board (the "Design Review Board"), which will be responsible for the establishment and administration of Design Guidelines to facilitate the purpose and intent of this Declaration.

Section 9.2 Purpose and General Authority. The Design Review Board will review, study and either approve or reject proposed improvements on the Property, which shall be reviewed for compliance with (i) this Declaration, (ii) the Design Guidelines, (iii) any rules and regulations that the Design Review Board may establish from time to time to govern its proceedings, and (iv) the Community Documents. No improvement, including paint colors, window coverings, awnings, walls, fences, decks, porches, patio covers, sunrooms and exterior lighting, will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced within Miller Ranch until plans for the improvements shall have been approved by the Design Review Board; provided, however, improvements that are completely within a structure and not visible from the exterior of the structure may be undertaken without such approval. Upon approval of the plans for any improvements by the Design Review Board a certificate of approval shall be executed by an officer of the Design Review Board, which certificate shall be affixed to the approved plans. As such Design Review Board approval may be required by the County as part of any application by an Owner for a building permit submitted to the County, the Master Association hereby agrees to indemnify and hold harmless the County, its officers, agents and insurers from and against all liability, claims and demands, including the County's reasonable attorneys' fees and costs, which arise out of or in any manner are connected with the County's refusal to issue a building permit if such liability, claim or demand is alleged to be caused in whole or in part by the acts, omissions, errors, mistakes or negligence of the Design Review Board in refusing to issue a certificate of approval as set forth above.



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The Design Review Board shall have the sole responsibility for interpreting and enforcing the Design Guidelines. The County shall have no responsibility to interpret or enforce such Design Guidelines. The Design Review Board shall also have the responsibility to interpret and enforce the Community Documents in accordance with the terms of this Declaration while acknowledging that the County has the independent right and responsibility to interpret and enforce the Community Documents. Within the Community Documents, the County has expressly reserved the right to refuse to approve any application for a building permit or certificate of occupancy for the construction or occupancy of any building or structure within the Project if any building or structure fails to comply with the requirements set forth under the Community Documents in the County's sole determination. This provision shall not be construed as a waiver by Declarant, an Owner or the Master Association of any right to appeal the County's refusal to approve any application pursuant to the appeal rights otherwise available under the Land Use Regulations for Eagle County or other applicable law.

Section 9.3 Board Discretion. The Design Review Board will exercise its best judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the building site, height, grade and finished ground elevation, landscaping, and the schemes and aesthetic considerations set forth in the Design Guidelines and other Master Association Documents. The Design Review Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. The approval by the Design Review Board of improvements on the Property shall carry no precedential weight when reviewing subsequent requests for approvals, and the Design Review Board shall not be required to approve requests for the same or similar improvements.

Section 9.4 Design Guidelines. The Design Guidelines may include, among other things, at the sole discretion of the Design Review Board, the restrictions and limitations set forth below:

9.4.1 Procedures and necessary fees for making application to the Design Review Board for design review approval, including the documents to be submitted and the time limits in which the Design Review Board must act to approve or disapprove any submission.

9.4.2 Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.

9.4.3 Designation of the building site on a Residential Lot and establishing the maximum developable area of the Residential Lot.

9.4.4 Minimum and maximum square foot areas of living space that may be developed on any Residential Lot.

9.4.5 Landscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the type and use of plants and trees, and other practices benefiting the protection of the environment, conservation of water, aesthetics and architectural harmony of Miller Ranch.



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9.4.6 General instructions for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation or utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

9.4.7 Standards, with limitations and restrictions for walls, fences, patio covers, sunrooms and all other structures.

9.4.8 Standards, with limitations and restrictions, on exterior colors and finishes, exterior lighting and window coverings.

9.4.9 Standard plans for garage construction.

The Design Review Board is authorized to adopt different Design Guidelines to apply to different portions or classifications of Units within Miller Ranch at the discretion of the Design Review Board. All Design Guidelines adopted by the Design Review Board shall be in general conformance with the Berry Creek/Miller Ranch Design Guidelines.

Section 9.5 Modification of Design Guidelines. The Design Review Board may amend, repeal and augment the Design Guidelines from time to time, in the Design Review Board's sole discretion. The Design Guidelines will be binding on all Owners and other persons governed by this Declaration. Notwithstanding the foregoing, the Design Review Board is empowered in its discretion to grant variances from the requirements of the Design Guidelines under unique or unusual circumstances.

Section 9.6 Design Review Board Membership. The Design Review Board will be composed of not less than three (3) persons nor more than five (5) persons. The Design Review Board members may be non-members of the Master Association. All of the members of the Design Review Board will be appointed, removed and replaced by Declarant, in its sole discretion, until all the Units comprising the Property are sold unless required otherwise by the Act, or such earlier time as Declarant may elect to voluntarily waive this right by written notice to the Master Association, and at that time the Executive Board will succeed to Declarant's right to appoint, remove or replace the members of the Design Review Board.

#### Section 9.7 Organization and Operation of Design Review Board.

9.7.1 The term of office of each member of the Design Review Board, subject to Section 9.6, will be two (2) years, commencing January 1 of each year, so that the term of at least one director shall expire each year. Directors shall hold office until his successor shall have been appointed. Should a Design Review Board member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided below.

9.7.2 So long as Declarant appoints the Design Review Board, Declarant will appoint the chairman. At such time as the Design Review Board is appointed by the Executive Board, the chairman will be elected annually from among the members of the Design Review Board.



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by a majority vote of such members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.

9.7.3 The Design Review Board chairman will take charge of and conduct all meetings and will provide reasonable notice to each member of the Design Review Board prior to any meeting. The notice will set forth the time and place of the meeting, and notice may be waived by any member.

9.7.4 The affirmative vote of a majority of the members of the Design Review Board will govern its actions and be the act of the Design Review Board.

9.7.5 The Design Review Board may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Design Review Board may delegate its plan review responsibilities to one or more of its members or to consultants retained by the Design Review Board. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant will be equivalent to approval or disapproval by the entire Design Review Board.

Section 9.8 Expenses. Except as provided in this Section below, all expenses of the Design Review Board will be paid by the Master Association and will constitute a Common Expense. The Design Review Board will have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Design Review Board from time to time, and such fees will be collected by the Design Review Board and remitted to the Master Association to help defray the expenses of the Design Review Board's operation. Further, the Design Review Board may in its reasonable discretion retain the services of a third party consultant to assist the Design Review Board in reviewing a particular application; provided, however, that the Design Review Board secures the prior consent of the applicant. In such event, the Design Review Board shall charge the applicant for the professional fees incurred in retaining such consultant. In the event that the Design Review Board determines in its reasonable discretion that a third party consultant should be retained to assist in the application and the applicant refuses to accept and pay for such services, the application shall be considered withdrawn by the applicant.

Section 9.9 Other Requirements. Compliance with the Master Association's design review process is not a substitute for compliance with the County of Eagle building requirements, including any building envelope requirements, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Further, the establishment of the Design Review Board and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Units and improvements as otherwise required under the Master Association Documents.

Section 9.10 Limitation of Liability. The Design Review Board will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Design Review Board nor any individual Design Review Board member will be liable to any person



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for any official act of the Design Review Board in connection with submitted plans and specifications, except to the extent the Design Review Board or any individual Design Review Board member acted with malice or wrongful intent. Approval by the Design Review Board does not assure approval by the appropriate governmental body or commission for the County of Eagle. Notwithstanding that the Design Review Board has approved plans and specifications, neither the Design Review Board nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval relating to the improvements. Neither the Executive Board, the Design Review Board, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Master Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Design Review Board will be defended and indemnified by the Master Association in any such suit or proceeding which may arise by reason of the Design Review Board's decisions. The Master Association, however, will not be obligated to indemnify each member of the Design Review Board to the extent that any such member of the Design Review Board is adjudged to be liable for malice or wrongful intent in the performance of his duty as a member of the Design Review Board, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

#### Section 9.11 Enforcement

9.11.1 Any member or authorized consultant of the Design Review Board, or any authorized officer, Director, employee or agent of the Master Association may enter upon any Unit during normal business hours after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Unit to determine whether the improvements have been or are being built in compliance with the Master Association Documents and the plans and specifications approved by the Design Review Board.

9.11.2 Every violation of these covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner will be applicable. Without limiting the generality of the foregoing, these covenants may be enforced as provided below after implementing the hearing procedures set forth in Section 4.14 of the Bylaws.

9.11.2.1 The Design Review Board may adopt a schedule of fines for failure to abide by the Design Review Board rules and the Design Guidelines, including fines for failure to obtain any required approval from the Design Review Board.

9.11.2.2 The Master Association, upon request of the Design Review Board and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Unit or Project during normal business hours after notice to the Owner, without being deemed guilty of trespass, and remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of these covenants. The Owner of the improvements will immediately



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reimburse the Master Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Master Association within thirty (30) days after the Master Association gives the Owner notice of the expenses, the sum owed to the Master Association will bear interest at the Maximum Rate from the date of the advance by the Master Association through the date of reimbursement in full, and all such sums and interest will be a default Assessment enforceable as provided in Article 8.

9.11.3 All improvements commenced on the Residential Lots will be prosecuted diligently to completion and will be completed within six (6) months after commencement, unless an exception is granted in writing by the Design Review Board]. If an improvement is commenced and construction is then abandoned for more than fifteen (15) days, or if construction is not completed within the required period of time, then after notice and opportunity for hearing as provided in the bylaws of the Master Association, the Master Association may impose a fine of up to \$1,000 per day (or such other reasonable amount as the Master Association may set) to be charged against the Owner of the Unit or Project until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Executive Board that such abandonment is for circumstances beyond the Owner's control. Such charges will be a default Assessment and lien as provided in Article 8.

Section 9.12 Binding Effect. The actions of the Design Review Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it or with respect to any other matter before it, will be conclusive and binding on all interested parties.

## ARTICLE 10 EASEMENTS

Section 10.1 Easement of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article. Such easement is subject to such reasonable regulation on access and use as described in Article 11 and as otherwise imposed by the Master Association or the Community Documents.

Section 10.2 Delegation of Use. Any Owner may delegate, in accordance with the Master Association Documents, the Owner's right of enjoyment in the Common Area to the Owner's Guests or Lessees.

Section 10.3 Recorded Easements. The Property shall be subject to any easements, rights-of-way or other matters as shown on any recorded Plat or Supplemental Plat affecting the Property, as shown on the recorded Maps, as reserved or granted under the Project Declarations, or as reflected in any other recorded documents. The recording data for recorded easements, licenses and other matters appurtenant to or included in the Property or to which any parts of the Property may become subject is set forth on the attached Exhibit F.

Section 10.4 Easements for Encroachments. The Common Area, and all portions of it, are subject to easements hereby created for encroachments of any portion of a Project or the Common Area as follows:



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10.4.1 In favor of the Master Association so that it shall have no legal liability when any part of the Common Area encroaches upon a Unit or any portion of a Project;

10.4.2 In favor of each Project Association so that the Project Association shall have no legal liability when any part of the common area or common elements of a Project encroaches upon the Common Area;

10.4.3 In favor of all Owners, the Project Associations and the Master Association for the existence, maintenance and repair of such encroachments.

Encroachments referred to in this Section include, but are not limited to, encroachments of improvements located on the Common Area onto Units, or common area or common elements of Projects, encroachments of overhangs or other portions of Buildings or other improvements which are part of the common area or common elements of the Projects onto the Common Area, and other encroachments caused by error or variance from the original plans in the construction of improvements on the Common Area or within a Project, by error in a Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the improvements on the Common Area or the Projects. Such encroachments shall not be considered to be encumbrances upon any Unit, any part of the Projects or the Common Area.

Section 10.5 Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property outside the footprint of any Building for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone and other communication services to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications and telephone wires, circuits and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners, the Project Associations, the Master Association and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore any disturbed property to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Executive Board shall have, and are hereby given, the right and authority to grant such easement upon, across, over or under any part or all of the Property outside the footprint of any Building without conflicting with the terms hereof. The easements provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property.

Section 10.6 Reservation of Easements, Exceptions and Exclusions. Declarant reserves for itself and its successors and assigns and hereby grants to the Master Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues and conduit installation areas, consistent with the ownership of the Property for the best interest of all of the Owners and the Master Association, in order to serve all the Owners.



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Section 10.7 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 10.8 Maintenance Easement. An easement is hereby granted to the Master Association and any Managing Agent and their respective officers, agents, employees, and assigns upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration, including but not limited to the special easement to maintain the Landscaping Maintenance Area set forth in Section 4.4 of this Declaration.

Section 10.9 Drainage Easement. An easement is hereby reserved to Declarant and its successors and assigns and granted to the Master Association and its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property outside the footprint of any Building for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property. Notwithstanding the forgoing, the Owners and Project Association(s) acknowledge and agree that each Owner with respect to its Lot and each Project Association with respect to its Project shall be solely responsible for the maintenance and upkeep of all drainage improvements and for proper drainage from such Owner's Lot or such Project Association's Project.

Section 10.10 Easements of Access for Repair, Maintenance and Emergencies. Some portions of the Common Area or the facilities serving same are or may be located on or within certain Units or common area or common elements of certain Projects, or may be conveniently accessible only through certain Units or common area or common elements of certain Projects. The Master Association shall have the irrevocable right to have access to each Unit and to all common elements or common areas of any Project from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Area therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to any Unit. Additionally there is hereby created an easement for such Common Area as it currently exists within the Units. Subject to the provisions of Section 5.11 above, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Area or as a result of emergency repair within another Unit at the instance of the Master Association shall be a Common Expense.

Section 10.11 Declarant's Rights Incident to Construction and Marketing. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction of improvements on the Property and/or sale of the Units and the Projects and all warranty work related to same, including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs. Declarant, its agents and contractors shall have the irrevocable right to have access to each Unit and to all common elements or common areas of any Project from time to time during such reasonable hours as may be necessary to perform any warranty work. Declarant may designate a portion of the Common Area for the foregoing construction and other purposes in connection with the development of a particular Unit or



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Project. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit or Units as sales offices, management offices or model residences so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit. The use by Declarant of any Unit as a model residence, office or other use shall not affect the Unit's designation on the Plat, Supplemental Plat or any Map as a separate Unit. Declarant further reserves exclusive easement rights over and across the Property for the purpose of marketing and sales of Units or of other projects developed or marketed by Declarant or its affiliates from time to time, including, without limitation, the right to show the Property and to display signs and other promotional devices. None of the foregoing rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner or Guest, or so as to be in contravention of applicable laws, regulations, rules, or other governmental requirements.

**Section 10.12 Governmental Requirements.** Declarant hereby reserves the right to grant such easements and rights-of-way across the Property, from time to time, as may be required by any government agency. Such easements and rights-of-way shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental agencies, for so long as the Declarant holds an interest in any Unit subject to this Declaration.

**Section 10.13 Declarant Easements.** Declarant reserves unto itself, its successors, assigns, Lessees and Guests, for so long as it holds any interest in any Unit, the same easement rights granted to Owners under this Declaration and specific easement rights over and across the Property as it may deem necessary for its use from time to time.

**Section 10.14 Right of Declarant and Association to Own Units and to Use Common Area.** An easement is hereby reserved by Declarant for itself and its successors and assigns and granted to the Master Association and its officers, agents, employees, successors and assigns to maintain offices, storage areas, conference areas and recreational areas for use by the Master Association within the Common Area, subject to all rules and regulations established under this Declaration.

**Section 10.15 Remodeling Easement.** Declarant, for itself and its successors and assigns, including Owners, retains a right and easement in and about the Common Areas for the construction and installation of any duct work, additional plumbing, or other additional services or utilities serving the Common Area in connection with the maintenance, repair, improvement or alteration of the Common Area, including the right of access to such areas of the Property as are reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Executive Board shall be final.

**Section 10.16 General Reservations.** Declarant reserves (a) the right to dedicate any access roads and streets serving the Property or and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair maintenance or regulation of parking or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, or the Master Association.



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Section 10.17 Reservation for Expansion. Declarant hereby reserves for itself and the Master Association and/or for Owners in all future phases of Miller Ranch an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress from the Expansion Property, and other properties abutting and contiguous to the Property and the Expansion Property, and for use of the Common Area as may be reasonably necessary or incident to the construction of improvements on the Residential or other improvements on the Property or the Expansion Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to Miller Ranch by the Owners. The location of these easements and rights-of-way may be made certain by Declarant or the Master Association by instruments recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

Section 10.18 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

## ARTICLE 11 RESTRICTIONS ON USE

Section 11.1 Land Use Restrictions. In addition to the restrictions found in this Article 11, all or any portion of the Property shall be further restricted in its use, density or design according to the Community Documents; any supplemental declarations of land use restrictions for Miller Ranch recorded with the Clerk and Recorder of Eagle County, Colorado, if any such supplemental declarations are recorded prior to the time Declarant transfers or conveys any such Property to the Master Association or to any third party; and the rules and regulations of the Master Association. Each Owner shall comply with all other terms, provisions, covenants, conditions, restrictions, easements and reservations on the Owner's part to be complied with under this Declaration. During the period in which Declarant retains Expansion and Development Rights as defined in Section 18.6 hereof, no Owner shall be entitled to apply for any change to the Community Documents affecting the zoning of such Owner's property without Declarant's consent.

Section 11.2 Use Limitations. All Residential Units may be used only for dwelling purposes and typical residential activities incident thereto in accordance with applicable zoning regulations in effect from time to time and in conformance with the Affordable Housing Restrictions. Occupancy of each Residential Unit is limited to no more occupants than the number of bedrooms plus one, to a maximum of four occupants, except that more occupants will be permitted in a Residential Unit if all of such occupants are in the same immediate family. Except as otherwise provided in Section 10.11 or as expressly permitted in writing by the Design Review Board, no trailers, or temporary structures shall be permitted on the Property. All Units must comply with the Uniform Building Code approved and enforced by the County.

Section 11.3 Maintenance of Property. Units, except for any portion of the Property then undergoing major construction, including all improvements on such Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and in good repair, and no trash, trash containers (other than on trash collection day), litter, junk, boxes, containers,



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bottles, cans, clothes lines, window air conditioning units, basketball hoops, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit or common area or common elements of a Project so that they are visible from, or are a nuisance in any way to, any other Unit, the Common Area or any road. All flags, antennas, cables, satellite dishes, lights, window coverings, signs and any other items visible from the exterior of any Residence are subject to the review and approval of the Design Review Board. In addition, no landscaping within, or fences surrounding the Landscaping Maintenance Area may be modified without the prior written consent of the Master Association.

**Section 11.4 Use of Property During Construction.** It shall be expressly permissible and proper for Declarant and any Owner acting in accordance with the Design Review Guidelines or with the prior written consent of the Design Review Board, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Property, to perform such activities and to maintain upon portions of the Property as they deem necessary such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. However, no activity by an Owner will be performed and no facility will be maintained by an Owner on any portion of the Property in such a way as to unreasonably interfere with the use or access of any other Owner or its Guests or Lessees to such Owner's Unit. If any Owner's use under this provision is deemed objectionable by the Design Review Board, then the Design Review Board, in its sole discretion, may withdraw any permission granted.

**Section 11.5 No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Unit or the Common Area nor shall anything be done or placed in or on any Unit, the common area or common elements of any Project or the Common Area which is or may become a nuisance. As used herein, the term "noxious or offensive activity" shall include any loud noise, but shall not include any activities of an Owner, Declarant or their respective designees which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate Association Documents or the statutes, rules or regulations of any governmental authority having jurisdiction with respect thereto and do not unreasonably interfere with any Owner's use of its Unit or with any Owner's ingress and egress to or from its Unit and a roadway.

**Section 11.6 No Hazardous Activities.** No activities shall be conducted in or on any Unit, the Common Area or common elements of any Project or the Common Area and no improvements shall be constructed on any part of Property, which are or might be unsafe or hazardous to any person or property. Use of charcoal grills on wood decks is prohibited. Off road vehicles, including snowmobiles and four wheelers, cannot be operated within the Project.

**Section 11.7 No Unsightliness.** No unsightliness shall be permitted in or on any Unit or the common area or common elements of any Project. Without limiting the generality of the foregoing:

**11.7.1.1** All unsightly structures, facilities, equipment, objects and conditions shall be kept within an enclosed structure at all times, no grills, toys bicycles or other items may be kept on front porches or on balconies except for appropriate furniture designed specifically for outdoor use;



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11.7.1.2 Mobile homes, travel trailers, tent trailers, trailers, trucks (except pickup trucks), inoperable vehicles, snowmobiles, golf carts, boats, boat trailers, tractors, detached campers, camper shells, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment may be parked on parking lots or other areas specifically designated by the Design Review Board for such equipment; and

11.7.1.3 Pipes for water, gas, sewer, drainage or other purposes, wires, cables, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground, and satellite dishes shall be appropriately regulated by the Design Review Board as permitted by applicable law.

All structures, including tennis courts, outdoor swimming pools, outdoor hot tubs or jacuzzis, or similar facilities shall be in compliance with the rules and regulations of the Design Review Board as in effect from time to time. The Design Review Board shall have the power to grant a variance from the provisions of this Section from time to time as it deems necessary or desirable.

Section 11.8 Restriction on Animals. No animals of any kind shall be raised, bred or kept in or on any Unit or Project except domestic cats, dogs or other household pets permitted by the Master Association so long as they are (i) maintained in accordance with this Declaration, the rules and regulations of the Master Association and any other Association Document, (ii) not a nuisance or kept, bred or maintained for any commercial purposes and (iii) do not exceed two dogs and two cats or other household pet; provided, however, that an Owner may petition the Executive Board of the Association for a variance from this requirement, which the Association is empowered to grant in its discretion. No person shall allow any dog owned or controlled by such person to roam within Miller Ranch unattended or to bark for long periods of time if the barking can be heard from any Common Area or public right of way. Dogs shall either be contained indoors or confined within the boundary of a Unit in a manner approved by the Design Review Board. At all other times, dogs shall be on a leash and under the direct control and supervision of their owners. Contractors and subcontractors shall be prohibited from bringing dogs into Miller Ranch, and such prohibition shall even apply to dogs kept inside motor vehicles. Violations of this policy may, at the discretion of the Executive Board, result in the eviction of the dog from the Miller Ranch, following appropriate notice and hearing.

Section 11.9 Restriction on Signs. Except as otherwise provided in Section 10.11, no signs or advertising devices of any nature shall be erected or maintained in or on any Unit or the Common Area or common elements of any Project in such a manner as to be visible from any other Unit or the Common Area except signs approved by the Design Review Board, political signs, signs required by applicable law or legal proceedings, signs which are required by law to be allowed, identification signs for work under construction (as approved by the Design Review Board), temporary signs to caution or warn of danger or the Master Association signs necessary or desirable to give directions or advise of rules or regulations. Permitted signs shall be subject to the reasonable regulation by the Design Review Guidelines.



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Section 11.10 Parking and Use of Garage. The number of vehicles parked at each Residential Unit is limited to the number of bedrooms of that Unit plus one, but in no event to exceed three vehicles per Unit. Garages must be kept free of contents that would prevent the garage from being used by the number of cars it was designed to accommodate. Garage doors must remain closed at all times other than when a vehicle is moving in or out of the garage. No servicing, maintenance or repair of vehicles may occur within the Project unless performed in a closed garage.

Section 11.11 Drainage Restriction. The flow of any surface drainage into any sewer system on the Property, except into storm sewers constructed for that purpose, shall be prohibited.

Section 11.12 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any special declarant rights (as that term is defined in the Act); or (ii) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Miller Ranch; provided, however, that Declarant shall comply with all applicable laws in the exercise of the rights in this Section.

Section 11.13 Health, Safety and Welfare. In the event additional uses, activities and/or facilities are deemed by the Executive Board to be nuisances or to adversely affect the health, safety or welfare of Owners or members of the general public or the value of any Property, the Executive Board may adopt rules and regulations restricting or regulating the same.

Section 11.14 Compliance with Law. In addition to the compliance requirements set forth in Section 11.1 above, no portion of the Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, State of Colorado, County of Eagle, and all other municipal, governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials. Furthermore, no Owner shall release, discharge or emit from the Property or dispose of, or allow any person under such Owner's control or direction to release, discharge or emit from the Property or dispose of, any material on, above or under the Property that is designated as a pollutant or contaminant under any federal, state or local law, regulation or ordinance.

Section 11.15 Violation. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article 11 shall be made by the Executive Board after notice and an opportunity to be heard and shall be final. Procedures for notice and hearing are contained in the Bylaws of the Master Association.

## ARTICLE 12 INSURANCE AND FIDELITY BONDS

Section 12.1 General Insurance Provisions. The Master Association shall maintain, to the extent reasonably available:

12.1.1 Property insurance on the Common Area for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement



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costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date; and

12.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area and the Master Association insuring the Executive Board, the Master Association, the Managing Agent and their respective employees, agents and all persons acting as agents. Limits of liability will be determined by the Executive Board and will be at least \$2,000,000 for any injuries or death sustained by any person in any single occurrence, and at least \$1,000,000 for property damage resulting from each occurrence. Such policy will include coverage for contractual liability, liability for non-owned and hired automobiles, and such other risks as are customarily covered with respect to developments similar to Miller Ranch in construction, location and use. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties.

12.1.3 The Master Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Units and/or common areas or common elements of Projects that the Master Association is not obligated to insure to protect the Master Association or the Owners.

Section 12.2 Cancellation. If the insurance described in Section 12.1 above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Master Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 12.3 Policy Provisions. Insurance policies carried pursuant to Section 12.1 above must provide that:

12.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Master Association;

12.3.2 The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

12.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Master Association, will void the policy or be a condition to recovery under the policy; and

12.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Master Association's policy provides primary insurance.

Section 12.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 12.1 above must be adjusted with the Master Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or



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otherwise to the Master Association, and not to any holder of a security interest. The insurance trustee or the Master Association shall hold any insurance proceeds in trust for the Owners and First Mortgagees as their interests may appear. Subject to the provisions of Article 15 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Master Association, Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 12.5 Association Policies. The Master Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Master Association settles claims for damages to the Property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Master Association.

Section 12.6 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 12.1 above shall issue certificates or memoranda of insurance to the Master Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Master Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 12.7 Common Expenses. Premiums for insurance that the Master Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 12.8 Fidelity Insurance. Blanket fidelity bonds must be maintained by the Master Association to protect against dishonest acts on the part of its officers, Directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Master Association. The Master Association must also secure and maintain at all times, or require to be secured or maintained at all times by any parties handling the collection, deposit, transfer or disbursement of Association funds, fidelity insurance. Such fidelity bonds shall be in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Master Association or the Managing Agent, as the case may be, at any given time during the term of each bond, provided however that in no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds, as calculated from the then-current budget of the Master Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer or disbursement of Association funds be less than \$50,000. In addition all funds and accounts of the Master Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Master Association shall be kept in an account separate from the operational account of the Master Association. Any fidelity coverage shall name the Master Association as an obligee, and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The bonds shall provide that they may not be cancelled or substantially modified



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(including cancellation for non-payment of the premium) without at least ten (10) days' prior written notice to the Association and any Eligible Mortgage Holders.

Section 12.9 Workmen's Compensation Insurance. The Master Association shall obtain workmen's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 12.10 Other Insurance. The Master Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Master Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

Section 12.11 Insurance Obtained by Owners. It shall be the responsibility of each Owner or Project Association (as set forth in the applicable Project Declaration), at such party's expense, to maintain physical damage insurance on such Owner's Unit and personal property and furnishings and on the common areas or common elements of such Project and public liability insurance covering such Owner's Unit and the common areas or common elements of such Project in limits which shall at any time be considered customary to protect against tort liability. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall conclude to be desirable, and a Project Association may obtain such other and additional insurance coverage on and in relation to the common areas or common elements of such Project as the Project Association, in its sole discretion, shall conclude to be desirable. However, none of such insurance coverages shall affect any insurance coverage obtained by the Master Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Master Association, the Project Association and/or the Owner. An Owner or Project Association shall be liable to the Master Association for the amount of any such diminution of insurance proceeds to the Master Association as a result of insurance coverage maintained by the Owner or Project Association, and the Master Association shall be entitled to collect the amount of the diminution from the individual Owner or all Owners of Units within the Project as if the amount were a default Assessment, with the understanding that the Master Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner or Project Association shall include a provision waiving the particular insurance company's right of subrogation against the Master Association and other Owners or Project Associations.

The Executive Board may require an Owner or Project Association who purchases insurance coverage as described herein to file copies of such policies with the Master Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Master Association.



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## ARTICLE 13 MECHANICS' LIENS

Section 13.1 Mechanics' Liens. Subsequent to the recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area or the common areas or common elements of any Project. Each Owner shall indemnify and hold harmless each of the other Owners, the Project Associations and the Master Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner, the common elements or common areas of any Project or against the Common Area, or any part thereof.

Section 13.2 Enforcement by the Master Association. At its own initiative or upon the written request of any Owner or Project Association (if the Master Association determines that further action by the Master Association is proper) the Master Association shall enforce the indemnity provided by the provisions of Section 13.1 above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Master Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Master Association in accordance with Sections 8.9, 8.10 and 8.11 above.

## ARTICLE 14 ASSOCIATION AS ATTORNEY-IN-FACT

Section 14.1 Appointment. Each and every Owner hereby irrevocably constitutes and appoints the Master Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Common Area upon its damage, destruction, condemnation, or obsolescence as provided below in Articles 15, 16 and 17. In addition, the Master Association, or any insurance trustee or substitute insurance trustee designated by the Master Association, is hereby appointed as attorney-in-fact under this Declaration for the purpose of purchasing and maintaining insurance under Article 12 above, including: the collection and appropriate disposition of the proceeds of such insurance; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Master Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointments of the attorneys-in-fact as provided above.



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Section 14.2 General Authority. As attorney-in-fact, the Master Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Master Association as attorney-in-fact.

## ARTICLE 15 DAMAGE OR DESTRUCTION

Section 15.1 Casualty to Common Area. In the event of damage or destruction to any part of the Common Area due to fire or other adversity or disaster, any insurance proceeds shall be collected by and paid to the Master Association and such insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Master Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, as applicable, or if there are no insurance proceeds, the Executive Board shall levy an Assessment pursuant to Article 8 in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Master Association shall have no obligation to repair or reconstruct the damaged or destroyed Common Area if such repair or reconstruction would be illegal under any state or local statute or ordinance governing health or safety or if within sixty (60) days after such damage or destruction Owners representing sixty-seven percent (67%) of the votes in the Master Association and Eligible Mortgage Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders, elect not to rebuild. The Assessment provided for herein shall be a debt of each Owner and a lien on its Unit, and may be enforced and collected in the same manner as any assessment lien provided for in Article 8. If Owners representing sixty-seven percent (67%) of the votes in the Master Association and Eligible Mortgage Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders elect not to rebuild any damage or destruction to the Common Area in accordance with the terms and provisions set forth above, the Master Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a slightly condition and shall have the right to levy against and collect from the Owners an Assessment for this limited purpose, if necessary.

Section 15.2 Casualty to Unit or Project. In the event of damage or destruction of the improvements located on any Unit or any part thereof or any damage or destruction to any common areas or common elements of any Project (other than any Common Area which is governed by Section 15.1), due to fire or other adversity or disaster, the Owner of such Unit or, if the Unit is subject to a Project Declaration, the Project Association shall, at its sole cost and expense, with due diligence, cause the damaged or destroyed improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction. If such repair or restoration or such demolition, debris removal, regrading and landscaping is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if the same is commenced but then abandoned for a period of more than ninety (90) days, the Master Association may, after notice and an opportunity to be heard, impose a fine of up to \$1,000.00 per day or such other rate imposed by the Executive Board in compliance with the Act, charged against the Owner or Project Association until such repair or restoration or such demolition, debris removal, regrading and landscaping is commenced or re-commenced, as the case may be, unless the Owner or Project Association can



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prove to the satisfaction of the Executive Board that such failure is due to circumstances beyond the Owner's or Project Association's control. Such fine shall be in addition to any Assessment to which such property is subject and the Master Association shall have all of the rights pertaining to a default Assessment specified in Article 5 for such amount.

#### ARTICLE 16 OBSCOLESCENCE

The Owners holding an aggregate of sixty-seven percent (67%) or more of the total voting interest in the Master Association, including sixty-seven percent (67%) of the total voting interest of each class of members, and Eligible Mortgage Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders, may agree that the Common Area is obsolete and adopt a written plan for the renewal and reconstruction thereof. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as a Common Expense.

#### ARTICLE 17 CONDEMNATION

Section 17.1 Condemnation of Common Area. In the event the Common Area, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof (herein, a "taking"), each Owner will be entitled to notice thereof, but the Master Association will act as attorney-in-fact for all Owners in the proceedings incident to the taking unless otherwise prohibited by law. The award for such taking will be payable to the Master Association as trustee for all of the Owners to be disbursed as follows:

17.1.1 If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless restoration or replacement of such improvements would be illegal under any state or local statute or ordinance governing health or safety or unless within sixty (60) days after such taking Owners representing eighty percent (80%) of the votes in the Master Association and Eligible Mortgage Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders, elect not to restore or replace such improvements, the Master Association will restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Executive Board, the Design Review Board and any other governmental or quasi-governmental entity having jurisdiction over the Property. If such improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such improvements, the Executive Board may levy an Assessment in accordance with Article 8 in the aggregate amount of such deficiency and shall proceed to restore or replace such improvements.

17.1.2 If the taking does not involve any improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of improvements is completed, then the Master Association may retain such excess proceeds or distribute such excess in proportionate shares on the basis of all



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Assessments levied against such Units (other than default Assessments) for the prior twelve (12) month period.

Section 17.2 Condemnation of a Unit or Common Area or Common Element of a Project. In the event any Unit or common area or common element of a Project, or any portion thereof (other than any Common Area which is governed by Section 17.1), shall be taken, the condemnation award for such taking shall be paid solely to the Owner of such Unit or the Project Association, as applicable. The repair or restoration of any improvements located on such property which are affected by the taking shall be governed by the terms of Section 15.2. If an entire Unit shall be condemned, the Owner thereof shall automatically cease to be a member of the Master Association.

Section 17.3 Allocation of Interest After Condemnation. Section 39-33.3-107 of the Act shall govern the allocation of interests to Units following any condemnation.

## ARTICLE 18 EXPANSION AND WITHDRAWAL

### Section 18.1 Reservation of Expansion and Withdrawal Rights.

18.1.1 Declarant reserves the right for itself and any Successor Declarant to subject all or any part of the Expansion Property to the provisions of this Declaration and thereby expand the Property to include up to a maximum of Three Hundred Fifteen (315) Units and to expand the Common Area without consent or approval of the Owners. Any improvements made in connection with such expansion shall be consistent with the original improvements in structure type and quality of construction and shall be substantially completed prior to being subjected to this Declaration.

18.1.2 Subject to those restrictions set forth in Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time, to time to subject unspecified real property to the Project and the provisions of this Declaration.

Section 18.2 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder for Eagle County, Colorado, of one or more Supplemental Declarations and, if the real property being subject to this Declaration by such Supplemental Declaration has not been previously platted in a plat recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, of a Supplemental Plat depicting such Expansion Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the Residential Lots, Common Area and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion, which shall cause Miller Ranch to contain no more than Three Hundred Fifteen (315) Units, may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion determines. Declarant shall not be obligated to expand Miller Ranch beyond the number of Units initially submitted to this Declaration.



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Section 18.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units as shown on the Plat plus any additional Units added by a Supplemental Declaration or Declarations and, if necessary, Supplemental Plat or Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

Section 18.4 Declaration Operative on New Units.

18.4.1 The new Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the Supplemental Declaration and, if necessary, the Supplemental Plat(s) depicting the Expansion Property of public record in the real estate records of Eagle County, Colorado.

18.4.2 It is contemplated that additional Units on the Property will be committed to this Declaration. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

18.4.3 No rights of any character of any owner of Units in the Expansion Property shall attach until a Supplemental Declaration and, if necessary, a Supplemental Plat is filed of record annexing the Lots constructed in such area to Miller Ranch. Upon the recording of such Supplemental Declaration and, if necessary, Supplemental Plat, the Units constructed in the area shall be deemed to be governed in all respects by the provisions of this Declaration.

Section 18.5 Effect of Expansion. Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and, if necessary, Supplemental Plat(s) thereof, the Allocated Interest applicable to a Unit shall automatically be amended to reflect the then-current Allocated Interest applicable to each Unit. Such adjustment shall be reflected and set forth in the Supplemental Declaration. The formula used to establish the Allocated Interests is based upon a Unit's average site area square footage (as further allocated between Units sharing such site area) as a percentage of the aggregate site area square footage of all Units within Miller Ranch. The calculation of such formula as contained in this Declaration is final and binding upon all Owners irrespective of any later measurement of such square footages.

Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Plat or is the Owner of a Unit constructed on the Expansion Property) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Master Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.



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Section 18.6 Termination of Expansion and Development Rights. The rights reserved to Declarant for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights") shall expire seven (7) years from the date of recording this Declaration, unless terminated earlier pursuant to the terms and provisions of the Act or Eagle County Land Use Regulations, or unless the Expansion and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Master Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the Expansion and Development Rights by Declarant.

## ARTICLE 19 MORTGAGEE'S RIGHTS

Section 19.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Mortgages. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the articles of incorporation, bylaws and rules and regulations of the Master Association. This Article is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 19.2 Percentage of Eligible Mortgage Holders. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgage Holders is required, it shall mean the approval or consent of that number of Eligible Mortgage Holders under Mortgages encumbering Units, which in the aggregate have such specified percentage of votes in the Master Association when compared to the total votes allocated to all Eligible Mortgage Holders..

Section 19.3 Title Taken by Mortgagee. Any Mortgagee holding a First Mortgage of record against a Unit who obtains title to the Unit 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 Unit (i) is acquired, or (ii) could have been acquired under the laws of the State of Colorado governing foreclosures, whichever is earlier, provided, however, that the lien of the Master Association for unpaid assessments shall not have priority over a First Mortgage in the amount of more than six (6) months of annual Assessments, and provided, further, that a First Mortgagee or Agency that acquires title to a Unit through foreclosure of a First Mortgage will not be liable for any fees or charges related to the collection of the six (6) months of unpaid dues or charges that accrued before the First Mortgagee or Agency acquired title to the Unit.

Section 19.4 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for foreclosures to, or taking of, all or part of the Common Area, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 19.5 Audited Financial Statement. Upon the written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit, the Master Association shall



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prepare and furnish within one hundred twenty (120) days an audited financial statement of the Master Association for the immediately preceding fiscal year at the expense of such Mortgagee.

Section 19.6 Notice of Actions. The Master Association shall give prompt written notice to each Eligible Mortgage Holder of the following:

19.6.1 Any condemnation or any casualty loss which affects a material portion of the Common Area or any Unit in which an interest is held by the Eligible Mortgage Holder.

19.6.2 Any delinquency which remains uncured for sixty (60) days in the payment of Assessments by an Owner whose Unit is encumbered by a Mortgage held by such Eligible Mortgage Holder.

19.6.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Master Association.

19.6.4 Any proposed action which would require the consent of Eligible Mortgage Holders as required in Section 19.7 below.

Section 19.7 Consent Required. No amendment of any provision which is for the express benefit of any Mortgagee, or any insurers or guarantors of any Mortgage may be effective without the vote of Owners representing at least sixty-seven percent (67%) or more of the total voting interest in each class of members in the Master Association and until approved in writing by at least fifty-one (51%) of the Eligible Mortgage Holders.

Section 19.8 Notice of Objection. Unless an Eligible Mortgage Holder, or if any other change in this Declaration or any Association Documents requires the approval of any Mortgagees, then unless such Mortgagee, provides the Secretary of the Master Association with written notice of its objection, if any, to any proposed amendment or action, within thirty (30) days following the receipt of notice of such proposed amendment or action, the Eligible Mortgage Holder will be deemed conclusively to have approved the proposed amendment or action.

Section 19.9 First Mortgagee's Rights.

19.9.1 First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Master Association.

19.9.2 Eligible Mortgage Holders shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the eligible Mortgage Holder in the payment of Assessments of which the Eligible Mortgage Holder has received notice under Section 19.6.2 above. In that event, the Eligible Mortgage Holder shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.



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19.9.3 The Affordable Housing Restrictions set forth provisions regarding the relative seniority of the First Mortgage and the Deed Restrictions.

## ARTICLE 20 ACKNOWLEDGMENTS

Section 20.1 Acknowledgments. Each Owner is hereby advised of the following matters affecting the Property and the Owners' use and enjoyment thereof:

20.1.1 No interest in or right to use any Non-Association Amenities located near or on the Property, such as recreational facilities permitted by the Community Documents, shall be conveyed to any Owner pursuant to this Declaration. The owners of those facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation of, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any Owners. To the extent any of such facilities are made available to the public, the Owners will be subject to all applicable rules and procedures for use of such Non-Association Amenities. Access to and use of the Non-Association Amenities are strictly subject to the rules and procedures of the respective owners of the Non-Association Amenities, and no person gains any right to enter or to use those facilities by virtue of membership in the Master Association or ownership or occupancy of a Unit.

20.1.2 ALL PERSONS, INCLUDING ALL OWNERS, ARE HEREBY ADVISED THAT NO REPRESENTATIONS OR WARRANTIES, EITHER WRITTEN OR ORAL, HAVE BEEN MADE OR ARE MADE BY DECLARANT OR ANY OTHER PERSON WITH REGARD TO THE NATURE OR SIZE OF IMPROVEMENTS TO, OR THE CONTINUING OWNERSHIP OR OPERATION OF, THE NON-ASSOCIATION AMENITIES. NO PURPORTED REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, IN REGARD TO THE NON-ASSOCIATION AMENITIES SHALL EVER BE EFFECTIVE WITHOUT AN AMENDMENT HERETO EXECUTED OR JOINED INTO BY DECLARANT.

20.1.3 Substantial construction-related activities relating to the development of Units or Projects or other development within or near Miller Ranch may cause considerable noise, dust and other inconveniences to the Owners.

20.1.4 Properties located within Miller Ranch may be developed pursuant to the land uses and restrictions set forth in the Community Documents with no representation being made herein concerning the planned uses of such other properties. The zoning for Miller Ranch is established and governed by the Community Documents. Any amendment of the Community Documents requires approval by the County of Eagle. Each Owner acknowledges and agrees that such Owner has not relied upon any statements or representation regarding Miller Ranch or any other properties except for the statements and representations expressly set forth in this Declaration and the Community Documents. Each Owner and Project Association further acknowledges and agrees that such Owner and Project Association will not take any action to impair or delay any development of real property governed by the Community Documents so long as such development complies with the Community Documents, and each Owner and Project Association hereby waives any right it may have to object to any Project to be developed on any Undeveloped Property so long



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as such Project is in conformance with the terms, conditions and restrictions of the Community Documents as the same may be amended from time to time.

20.1.5 Ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to, (a) dripping water onto decks and porches from snow melt, (b) snow and ice build-up on decks and porches during winter months, and (c) other inconveniences arising from the sometimes variable weather conditions in the Rocky Mountains.

20.1.6 The Project may be located adjacent to various public and private facilities constructed or planned for construction within Miller Ranch, including, without limitation, recreational fields and amenities, a middle school and high school, day care facilities, bike paths, community college facilities and other possible uses as set forth in the Community Documents for Miller Ranch (the "Adjacent Facilities"). Each Owner acknowledges and agrees that such areas may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof, including, without limitation: (i) associated vehicular, pedestrian and bicycle traffic, (ii) construction vehicles and equipment; (iii) events organization and (iv) outdoor lighting.

20.1.7 The Project is located near railroad tracks and the use of such tracts is expected to generate attendant noise and other inconveniences to Purchaser.

20.1.8 The Units are subject to the Affordable Housing Restrictions. The Affordable Housing Restrictions contain certain provisions that impair a Mortgagee's legal rights to remedy a default under the mortgage and that require the Owner to send a notice of past due payments or default under the note secured by the Mortgage to Eagle County, Colorado. In addition, the Affordable Housing Restrictions impose resale restrictions on the Units.

## ARTICLE 21 DURATION OF COVENANTS AND AMENDMENT

Section 21.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 21.2 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon the written consent of Owners holding an aggregate of sixty-seven percent (67%) or more of the total voting interest in each class of members in the Master Association. No amendment shall be effective to change, limit, impair or reduce any right of Declarant as provided herein unless such amendment is approved in writing by Declarant. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or any Plat to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.



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Section 21.3 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon recording in the office of the Clerk and Recorder of Eagle County, Colorado a copy of the amendment, executed and acknowledged by the appropriate number of Owners, accompanied by a certificate of a licensed title insurance company as to ownership, or upon the recording of a copy of the amendment, together with a duly authenticated certificate of the secretary of the Master Association stating that the required number of consents of Owners and a certificate of a licensed title company as to title to the Units were obtained and are on file in the office of the Master Association.

## ARTICLE 22 DECLARANT'S RIGHTS REGARDING TRANSFER

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and recorded in the office of the Clerk and Recorder of Eagle County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

## ARTICLE 23 ALTERNATIVE DISPUTE RESOLUTION

Section 23.1 Agreement to Avoid Litigation. The Declarant, the Master Association, its officers, directors and committee members, 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 to encourage the amicable resolution of disputes involving the Project, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described herein ("Claims") shall be resolved using the procedures set forth below in lieu of filing suit in any court.

Section 23.2 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Master Association Documents, or the rights, obligations and duties of any Bound Party under the Master Association Documents or relating to the design or construction of improvements on the Project shall be subject to the provisions of this Section.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Section:

23.2.1 Any suit by the Master Association against any Bound Party to enforce the provisions of Article 8 (Assessments).

23.2.2 Any suit by the Master Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Master Association's ability to enforce the architectural standards and use restrictions and rules;



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

23.2.4 Any suit in which any indispensable party is not a Bound Party;  
and

23.2.5 Any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required below.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth below.

### Section 23.3 Mandatory Procedures.

23.3.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

23.3.1.1 The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

23.3.1.2 The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

23.3.1.3 Claimant's proposed remedy; and

23.3.1.4 That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

### 23.3.2 Negotiation and Mediation.

23.3.2.1 The Parties 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 Executive Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

23.3.2.2 If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of a reputable and knowledgeable mediation group providing such services in Eagle County, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Eagle County, Colorado, area.

23.3.2.3 If Claimant does not submit a claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all



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liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

23.3.2.4 Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that the mediation was to be mediated.

23.3.2.5 Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

### 23.3.3 Final and Binding Arbitration

23.3.3.1 If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the rules of arbitration as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

23.3.3.2 This subsection is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the "Award") 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.

### 23.3.4 Allocation of Costs of Resolving Claims

23.3.4.1 Subject to Section 23.3.4.2 below, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

23.3.4.2 Any Award, which is equal to or more favorable to Claimant than Claimant's Settlement Demand, shall add Claimant's Post Mediation costs to the Award, such costs to be borne equally by all Respondents. Any Award, which is equal to or less favorable to Claimant than any Respondent's Settlement Offer, shall award to such Respondent its Post Mediation Costs.



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23.3.5 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or Award 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 Award including, without limitation, attorneys' fees and court costs.

Section 23.4 Claim for Damages. Damages alleged or awarded in connection with a Claim shall be limited to actual damages. No punitive, incidental, consequential or other damages shall be claimed or awarded. Notwithstanding anything contained herein to the contrary, any claims, grievances or disputes against Declarant arising out of or relating to the design or construction of improvements on the Project shall require notification to Declarant in writing and provide for a reasonable amount of time for Declarant to correct the defect before any Claim may be made.

## ARTICLE 24 MISCELLANEOUS

Section 24.1 Compliance with the Act. Notwithstanding anything to the contrary in this Declaration, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 24.2 Nonwaiver. Failure by Declarant, the Master Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 24.3 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect.

Section 24.4 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 24.5 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 24.6 Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the articles of incorporation of the Master Association or the bylaws of the Master Association, this Declaration shall control. In case of conflicts in the provisions in the



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articles of incorporation of the Master Association and the bylaws of the Master Association, the articles of incorporation of the Master Association shall control. In case of conflicts in the provisions in the articles of incorporation, bylaws or this Declaration, on the one hand, and the Act, on the other hand, the terms of the Act shall control.

Section 24.7 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Executed as of the 28<sup>th</sup> day of October, 2003.

BERRY CREEK LIMITED LIABILITY CO., a Colorado limited liability company

By: ASW Realty Partners, LLC, a New Mexico limited liability company, Manager

By: [Signature]  
Name: Andrew S. Garber  
Title: MANAGER

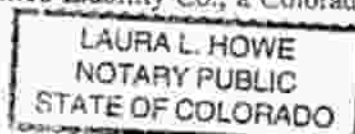
STATE OF COLORADO )

COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of October, 2003, by Andrew S. Garber as Manager of ASW Realty Partners, LLC, a New Mexico limited liability company, as Manager of Berry Creek Limited Liability Co., a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:



My Commission Expires Aug. 12, 2007

[Signature]  
Notary Public

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# JOINDER OF LIENOR

The undersigned, beneficiary under the Deed of Trust dated July 26, 2002, and recorded September 13, 2002, at Reception No. 807107 in the office of the Clerk and Recorder of Eagle County, Colorado, as amended and supplemented from time to time (the "Deed of Trust"), for itself and its successors and assigns, approves the foregoing Master Declaration for Miller Ranch, affecting a portion of the Property encumbered by the Deed of Trust, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by that Declaration.

WELLS FARGO BANK WEST,  
NATIONAL ASSOCIATION, a  
national banking association

By: [Signature]  
Name: Eric E. Muniz  
Title: Vice President

STATE OF COLORADO )  
COUNTY OF DENVER ) ss.

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of October, 2003, by Eric E. Muniz as Vice President of Wells Fargo Bank West, National Association.

WITNESS my hand and official seal.  
My commission expires 3/16/06  
[SEAL]



My Commission Expires 3/16/2006

[Signature]  
Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot ~~574~~ Miller Ranch, a Resubdivision of Tract D, Berry Creek/Miller Ranch PUD, according to the Plat recorded January 15, 2003, at Reception No. 820378, County of Eagle, State of Colorado.



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## EXHIBIT B

### LEGAL DESCRIPTION OF EXPANSION PROPERTY

A parcel of land situated in Section 4, Township 5 South, Range 82, West, of the Sixth Principal Meridian, County of Eagle, State of Colorado, being more particularly described as follows:

All that portion of Miller Ranch, A Resubdivision of Tract D, Berry Creek / Miller ranch PUD as recorded in the Office of the Clerk and Recorder at Reception No. 820378, excepting the following ten parcels: 1.) Parcel 1, 2.) Parcel 2, 3.) Parcel 3, 4.) Parcel 5, 5.) Parcel 6, 6.) Parcel 11, 7.) Parcel 12, 8.) Parcel 14, 9.) Tract A, 10.) All Road Right-of-Ways.

All that portion of Miller Ranch Filing 2, A Resubdivision of Tract A, and Parcel 14, Miller Ranch as recorded in the Office of the Clerk and Recorder at Reception No. 854785, excepting the following six parcels: 1.) Parcel 4, 2.) Parcel 7, 3.) Parcel 8, 4.) Parcel 13, 5.) Parcel 14, 6.) All Road Right-Of-Ways.

All that portion of Miller Ranch Parcel 10, A Re-Plat of Parcel 10, Miller Ranch, as recorded in the Office of the Clerk and Recorder at Reception No. 834260.

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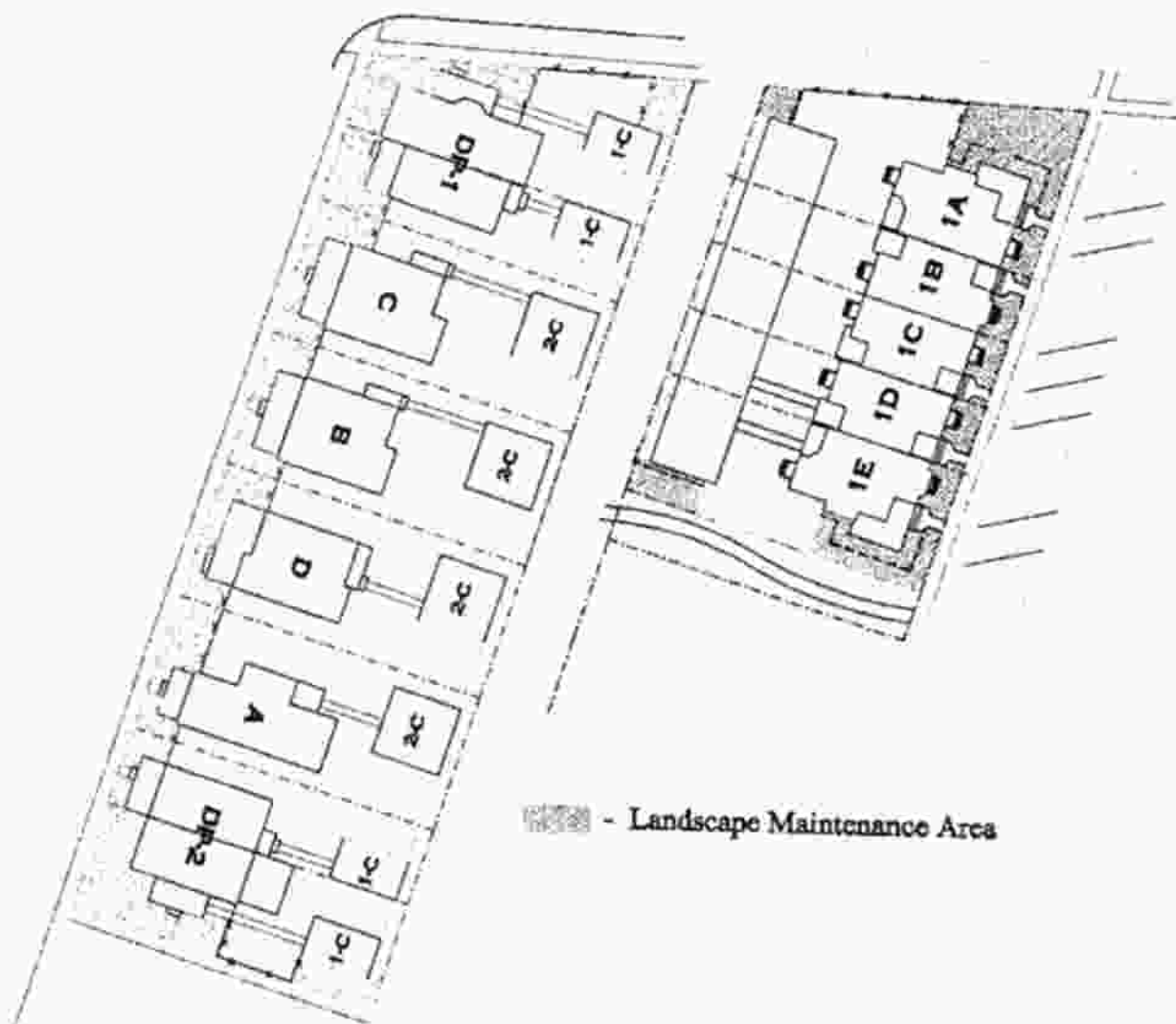


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# Exhibit C

Landscape Maintenance Area  
Typical



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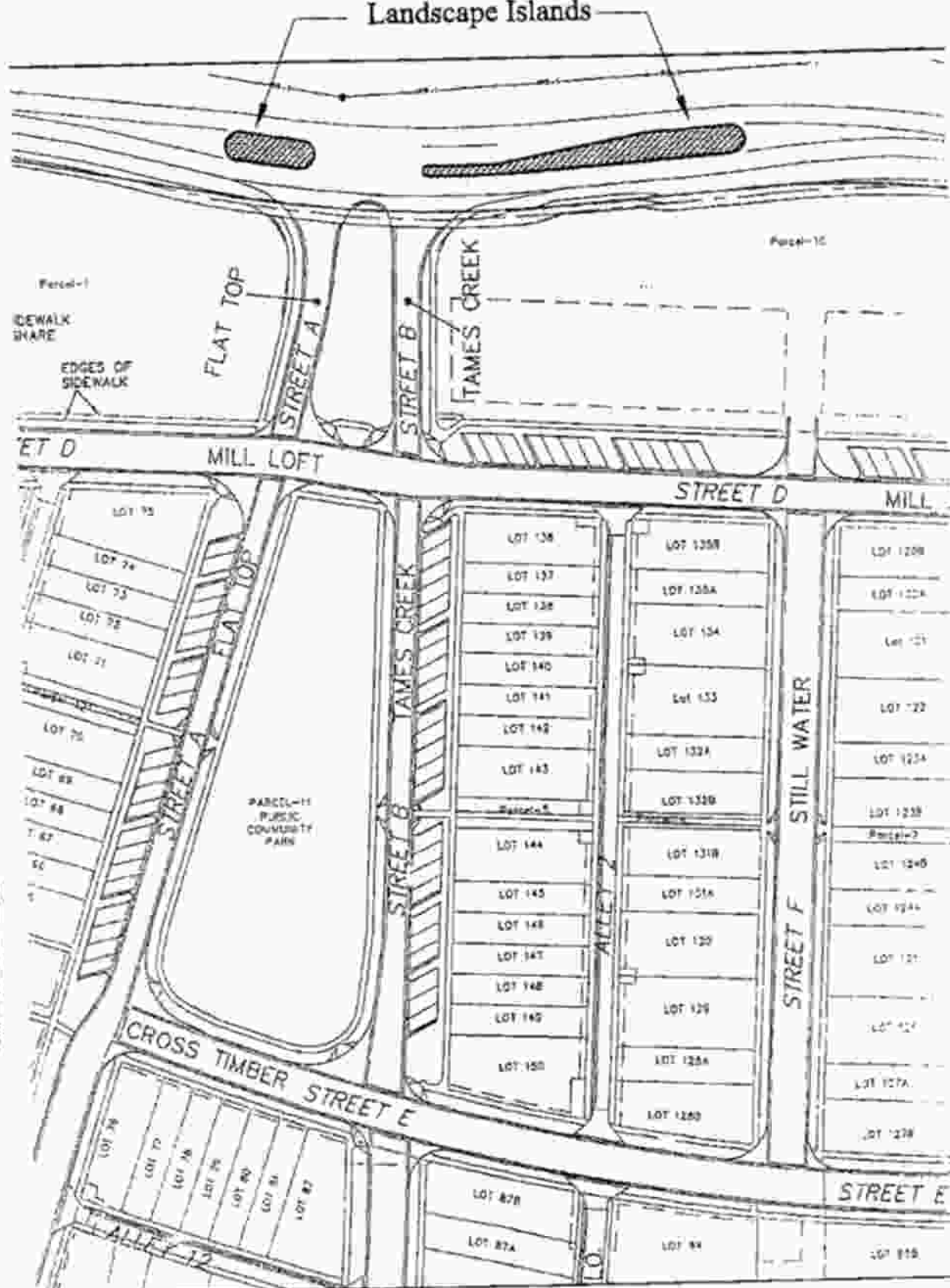
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Miller Ranch Road  
Landscape Islands



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## EXHIBIT E

### ALLOCATED INTERESTS AND FORMULA

The formula used to establish such Allocated Interests is a Unit's average site area square footage (as further allocated between Units sharing such site area) as a percentage of the aggregate site area square footage of all Units within Miller Ranch. The calculation of such formula, as contained here in this Declaration is final and binding upon all Owners irrespective of any later measurement of such square footages. Upon the submission of all of the Expansion Property to the Declaration, the Allocated Interests will be as follows:

#### UNIT TYPE

#### FINAL ALLOCATED INTEREST

##### Single Family Homes

Lots 2, 3, 5, 6, 7, 9, 10, 13, 14, 15,  
18, 19, 20, 23, 24, 25, 26, 27, 28, 29,  
30, 31, 32, 35, 36, 37, 38, 40, 41, 42,  
43, 45, 46, 48, 49, 50, 52, 53, 54, 55,  
58, 59, 60, 62, 63, 83, 84, 85, 88, 89,  
92, 93, 94, 96, 97, 98, 99, 100, 101, 102,  
103, 121, 122, 125, 126, 129, 130, 133  
and 134

0.5617% for each single family home

##### Three Bedroom Duplexes

Lots 1B, 4B, 8B, 11B, 12B,  
16B, 17B, 21B, 22B, 33B, 34B,  
39B, 44B, 47B, 51B, 56B, 57B,  
61B, 64B, 86B, 87B, 90B, 91B,  
95B, 120B, 123B, 124B, 127B,  
128B, 131B, 132B and 135B

0.4369% for each three bedroom duplex

##### Two Bedroom Duplexes

Lots 1A, 4A, 8A, 11A, 12A,  
16A, 17A, 21A, 22A, 33A,  
34A, 39A, 44A, 47A, 51A,  
56A, 57A, 61A, 64A, 86A,  
87A, 90A, 91A, 95A, 120A,  
123A, 124A, 127A, 128A, 131A,  
132A and 135A

0.3121% for each two bedroom duplex



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Three Bedroom Townhome (end)

Lots 65, 70, 71, 75, 76, 82, 104, 111,  
112, 119, 136, 143, 144 and 150

0.3745% for each three bedroom townhome  
(end)

Three Bedroom Townhome (interior)

Lots 67, 73, 78, 106, 109, 114, 117,  
138, 141 and 148

0.2497% for each three bedroom townhome  
(interior)

Two bedroom Townhome (interior)

Lots 66, 68, 69, 72, 74, 77, 79, 80,  
81, 105, 107, 108, 110, 113, 115, 116,  
118, 137, 139, 140, 142, 145, 146, 147  
and 149

0.2497% for each two bedroom townhome  
(interior)

Lower Condominiums

Units 101, 102, 103, 104, 105, 106,  
107, 108, 109, 110, 111, 112, 113,  
114, 115, 116, 117, 118, 119, 120,  
121, 122, 123, 125, 126, 127, 128,  
129, 130, 131, 132, 133, 134, 135,  
136, 137, 138, 139, 140, 141, 142,  
143, 144, 145, 146, 147, 148, 149 and 150

0.2330% for each lower condominium

Upper Condominiums

201, 202, 203, 204, 205, 207, 208,  
209, 210, 211, 212, 213, 214, 215,  
216, 217, 218, 219, 220, 221, 222,  
223, 224, 225, 226, 227, 228, 229,  
230, 231, 232, 233, 234, 235, 236,  
237, 238, 239, 240, 241, 242, 243,  
244, 245, 246, 247, 248, 249 and 250

0.2330% for each upper condominium

Until all of the Expansion Property is submitted to this Declaration, the Allocated Interest for a particular Unit on a particular date will be the Unit's Final Allocated Interest shown above, divided by the sum of the Final Allocated Interests of all Units which have been submitted to this Declaration by such date. **THE TABLE OF ALLOCATED INTERESTS SET FORTH ABOVE DOES NOT IMPLY THAT ALL OF THE UNITS LISTED IN THE TABLE HAVE BEEN SUBMITTED TO THE DECLARATION**



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## EXHIBIT F

### EASEMENTS AND LICENSES OF RECORD

1. Right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded in Book 175 at Page 221.
2. Terms, conditions and provisions of Planned Unit Development recorded March 22, 2002 Reception No. 789801.
3. Right of way easement as granted to KN Energy, Inc. in instrument recorded April 30, 1999 under Reception No. 694363 and as described on the document recorded December 27, 1999 at Reception No. 718785.
4. Terms, conditions and provisions of Miller Ranch-Berry Creek Intergovernmental Agreement recorded June 3, 1999 at Reception No. 698432.
5. Terms, conditions and provisions of stipulation as to ownership of the Howard Ditch and Howard Ditch First Enlargement recorded October 11, 1996 in Book 708 at Page 213.
6. Right of way easement as granted to Holy Cross Electric Association, Inc. in instrument recorded May 19, 1995 in Book 667 at Page 636.
7. Right of way easement as granted to Upper Eagle Regional Water Authority in instrument recorded May 31, 2000, under Reception No. 731114.
8. Right of way easement as granted to Eagle River Water and Sanitation District in instrument recorded May 31, 2000 under Reception No. 731115.
9. Right of way easement as granted to K N Energy, Inc., a Kansas Corporation in instrument recorded July 5, 2001 under Reception No. 761419.
10. Easements, conditions, covenants, restrictions, reservations and notes on the plat of Berry Creek/Miller Ranch Planned Unit Development recorded June 25, 2002 at Reception No. 799649.
11. Terms, conditions and provisions of Howard Ditch easement agreement recorded June 20, 2002 at Reception No. 799277.
12. Terms, conditions and provisions of Holy Cross Energy underground right-of-way easement recorded September 3, 2002 at Reception No. 806010.



13. Gravel road traversing subject property as shown on the survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.
14. Bike path not within Bike Path Easement as shown on survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.
15. Flow line of irrigation ditch traversing subject property as shown on survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.
16. Drainage Ditch as shown on survey prepared by Peak Land Surveying, Inc., dated August 14, 2002, Job No. 1158.
17. Terms, conditions and provisions of the Plat of Miller Ranch recorded January 15, 2003 at Reception No. 820378.
18. Terms, conditions and provisions of Easement Agreement recorded July 03, 2003 at Reception No. 839283.
19. *October 14, 2003* Terms, Conditions and provisions of Deed Restriction Agreement recorded Reception No. 855028.



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## SUPPLEMENT TO MASTER DECLARATION FOR MILLER RANCH

This Supplement to the Master Declaration for Miller Ranch (the "Supplement to Declaration") is made as of October 4, 2005, by Berry Creek Limited Liability Co., a Colorado limited liability company (the "Declarant").

WHEREAS, Declarant has heretofore caused to be recorded a Master Declaration for Miller Ranch on October 31, 2003, at Reception No. 856076, as supplemented (the "Declaration") in the Eagle County, Colorado real property records; and

WHEREAS, in Article 18 of the Declaration, Declarant expressly reserved for itself the right to expand the Property (all capitalized terms used herein shall have the meanings as defined in the Declaration, unless otherwise defined or modified herein) by annexing and submitting all or a portion of the Expansion Property to the terms and conditions of the Declaration and creating additional Units and/or Common Area by one or more duly recorded Supplemental Declarations; and

WHEREAS, Declarant wishes to submit to the Declaration all of that property subject to the Final Plat and Condominium Map, Miller Ranch Mill Lofts-Phase 5, recorded Oct. 4, 2005, at Reception No. 931855, County of Eagle, State of Colorado (the "Supplemental Property").

NOW, THEREFORE, Declarant hereby declares that both the Property and the Supplemental Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements and the covenants, conditions, restrictions and easements contained in the Declaration, which are for the purpose of protecting the value and desirability of the Property and the Supplemental Property and which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title, or interest in all or any part of the Property or the Supplemental Property.

1. General. The terms and provisions contained in this Supplement to Declaration shall be in addition and supplemental to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall be applicable to this Supplement to Declaration and to the Supplemental Property. The definitions used in the Declaration are hereby expanded and shall hereafter and in the Declaration be deemed to encompass and refer to the Property as defined in the Declaration and the Supplemental Property as defined herein. For example, "Unit" shall mean the Units described in the Declaration plus the additional Units described herein. Reference to the "Property" shall mean both the Property and the Supplemental Property, and reference to the "Declaration" shall mean the Declaration as supplemented by this Supplement to Declaration. All ownership and other rights, obligations and liabilities of Owners of original Units are hereby modified as described herein.

2. Annexation of Supplemental Property. The Supplemental Property is hereby and, upon the recording of this Supplement to Declaration shall be, annexed into the Property, and

each Unit in the Supplemental Property shall be subject to all of the covenants, conditions, restrictions and easements as contained in the Declaration.

3. Effect of Expansion. Assessments by the Association as provided in Article 10 of the Declaration, upon the recording of this Supplement to Declaration, shall be divided among all Units subjected to the Declaration according to the interest allocations and formula set forth on Exhibit E to the Declaration. Notwithstanding any inclusion of additional Units under the Declaration, each Owner (regardless of whether such Owner is the owner of a Unit which is part of the Supplemental Property or part of the original definition of the Property) shall remain fully liable with respect to such Owner's obligation for the payment of the Common Expenses of the Association, including the expenses for any new Common Area, costs and fees, if any. The recording of this Supplement to Declaration shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

4. Reservation. Declarant hereby reserves the right for itself to further expand the Property in the future to include additional Units and to expand the Common Area.

5. Miscellaneous. 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. In case of conflict between the Declaration, as supplemented hereby, and the articles of incorporation or bylaws of the Association, the Declaration as supplemented shall control.

BERRY CREEK LIMITED LIABILITY CO., a Colorado limited liability company

By: ASW Realty Partners, LLC, a New Mexico limited liability company  
Its: Associate Manager

By: Kenneth Beck  
Kenneth Beck

STATE OF NEW MEXICO )  
 )ss.  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 3rd day of October, 2005, by Kenneth Beck, Associate Manager of ASW Realty Partners, LLC, a New Mexico limited liability company, the Manager of Berry Creek Limited Liability Co., a Colorado limited liability company.

WITNESS my hand and official seal

My commission expires: 5/2/09



*Nancy Margaret Mitchell*  
Notary Public