

SECOND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VALLEY AT WINTER PARK

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**SECOND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VALLEY AT WINTER PARK**

The following is a full and complete restatement and replacement of, and SHALL supersede in its entirety, the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK, which was originally recorded in the Grand County, Colorado Recorder's Office on June 5, 2000 as Reception No. 2000-005091, and the RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK recorded on February 1, 2001, at Reception No. 2001-000878 in the Grand County, Colorado Recorder's Office, and includes all amendments to the text and to the amendment of the Amended Final Plat of the VALLEY AT WINTER PARK SUBDIVISION, originally filed for record with the Grand County, Colorado Recorder's Office on March 8, 2001 as Reception No. 2001-002136.

This SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK is intended to delete all references to Declarant rights and the Golf Course (including Golf Course Infrastructure Easements) originally contemplated for the development on Open Space Tracts C and D and Building Areas 2 and 3 and to remove a restriction requiring kennels, dog runs, and other enclosures for all pets.

This SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK has been approved by THE VALLEY AT WINTER PARK HOMEOWNERS ASSOCIATION (herein "Association") pursuant to the amendment provisions of the original DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK, and pursuant to the provisions of Colorado Revised Statutes, Sections 38-33.3-217, as amended.

This SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK has been executed by the duly authorized Officers of the Association, pursuant to authority as set forth above.

This SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK (as amended from time to time), is made as of \_\_\_\_\_, 2012.

**RECITALS**

- A. A planned community has been developed on the real property legally described on Exhibit A1, attached hereto, pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3.319, as the same MAY be amended during the course of time.
- B. It is deemed necessary and desirable to subject described property to the covenants, restrictions, conditions, easements, reservations, assessments, charges and liens set forth in this Declaration.

In consideration of the foregoing, the Association declares as follows:

ARTICLE I  
DECLARATION

- Section 1.1     Declaration. The Association hereby creates a planned community as described in Exhibit A2, named “THE VALLEY AT WINTER PARK” (also referred to as the “Community,” as such term is defined within) on the Property as described in Exhibit A1 (as such term is defined within) and declares that the Property SHALL be held, sold and conveyed subject to the covenants, restrictions, conditions, easements, reservations, assessments, charges, liens and other provisions contained with this Declaration, all of which SHALL be covenants running with title to the property, or equitable servitudes thereon, as the case MAY be, and SHALL be binding on all parties having any right, title or interest in the Property (Except as otherwise set forth herein), and their respective successor, successors-in-title, assigns, heirs, devisees, executors, administrators, and personal representatives, and SHALL inure to the benefit of each Owner of any portion of the Property.
- Section 1.2     Goals, Purpose, and Philosophy. It is the intent of Association to create The Valley at Winter Park Community as a quality residential community development, which is controlled by this Declaration. The Property is subjected to this Declaration to encourage the construction of the Community of attractive structures and structures built of materials, textures and colors compatible with the natural surroundings; to obtain harmonious color schemes; to secure and maintain proper setbacks from streets; to apply a concept of architecture that creates continuity; and, in general, to provide for high quality improvements on the property and thereby to enhance the value of all building sites within the Community.
- Section 1.3     Covenants Running with the Property. All provisions of this Declaration including the covenants, restrictions, conditions, easements, reservations, assessments, charges, lines and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case MAY be. The benefits, obligations and burdens created by this Declaration SHALL bind and prevail to the interest of the Owners (as defined within), the Association (as defined within), all other entities or parties possessing rights, title or interest in the Property defined in Exhibit A1 or any portion thereof, including their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II DEFINITIONS

The following terms have the meanings assigned to them in this Article II and are used within this Declaration.

- Section 2.1     “Act” means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same MAY be during the course of time.
- Section 2.2     “Architectural Design and Review Committee” is a design review board appointed by the Board. The Architectural Design and Review Committee board SHALL review, study and approve, approve with conditions or reject any and all improvements proposed to be constructed or installed on any Common Areas or Lot.
- Section 2.3     “Articles” means the Articles of Incorporation of the Association, as the same MAY be amended during the course of time.
- Section 2.4     “Assessment” means a General Assessment, a Special Assessment, Specific Assessment, or a Default Assessment levied and assessed according to, and as described in, Article VIII.

- Section 2.5      “Assessment Lien” describes a lien which the Association MAY levy against each Lot in which any fines, late charges, penalties, interest and attorneys’ fees, disbursements and costs of collection MAY be imposed against its Owner under any Association Document. The Assessment Lien SHALL secure all of the foregoing obligations of an Owner from the time such obligations come due. SHOULD the Assessment Lien become payable in installments, the Assessment Lien SHALL secure each installment payment from the time payments begin until and including the due date set by any valid Association acceleration of installment obligations.
- Section 2.6      “Association” means The Valley at Winter Park Homeowners’ Association, a Colorado nonprofit corporation, and its successors and assigns.
- Section 2.7      “Association Documents” means this Declaration, the Articles of Incorporation of the Association, the Bylaws, Rules and Regulations, and Architectural Design and Review Guidelines, as the same MAY be amended during the course of time.
- Section 2.8      “Bylaws” means the document created as the Bylaws of the Association, as the same MAY be amended during the course of time.
- Section 2.9      “Common Areas” means Open Space, Tracts A, B, C and D, including Building Areas 2 and 3, and Sign Areas E, F, G and H.
- Section 2.10     “Common Expenses” means expenditures made, including expenses and capital items, or liabilities incurred by or on behalf of the Association for the general benefit of all Owners, including any reasonable reserves as the Board MAY find necessary or appropriate pursuant to this Declaration, the Bylaws and the Articles.
- Section 2.11     “Community” means the real property located in Grand County, Colorado, that consists of the Lots and Common Areas relating to the Homeowners Association, as shown on the amended Plat for The Valley at Winter Park, filed for record with the Grand County Recorder’s Office.
- Section 2.12     “Declaration” and “Second Restated Declaration” means this Second Restated Declaration of Covenants, Conditions and Restrictions for The Valley at Winter Park, as the same MAY be amended during the course of time.
- Section 2.13     “Default Assessment” has the meaning given in Section 8.6 below.
- Section 2.14     “Director” means a duly elected or appointed member of the Executive Board.
- Section 2.15     “Executive Board” or “Board” means the Association’s Board of Directors.
- Section 2.16     “First Mortgage” means any mortgage not subordinate to any other lien or encumbrance, except liens for taxes or any other liens given priority by law.
- Section 2.17     “First Mortgagee” means a Mortgagee under a First Mortgage.
- Section 2.18     “General Assessment” means the assessment determined by a formula (See Section 8.4) applied after a budget has been established by the Association’s Executive Board to establish an assessment on each Lot.
- Section 2.19     “Guest” means any relative (other than spouses and children under the age of 21), employee, agent, independent contractor, or invitee of an Owner.
- Section 2.20     “Interest in Common Areas” means the undivided interest in the Common Areas subject to the



terms and conditions in Section 3.2 below.

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- Section 2.21 “Lot” means a portion of the Community which is intended for Single Family Residential Use, whether improved or unimproved, and which MAY be independently owned and conveyed. The term SHALL refer to the land, if any, which is part of the Lot as well as any improvements located thereon, but SHALL not include Common Areas.
- Section 2.22 “Majority” means any percentage greater than 50 percent
- Section 2.23. “Member” means any Person or entity entitled to membership in the Association.
- Section 2.24 “Mortgage” means any mortgage, deed of trust or other document promising any Lot or interest therein as security for Payment of debt or obligation.
- Section 2.25 “Mortgagee” means any Person named as such or beneficiary in any Mortgage and any successor to that Person in respect to the Mortgage.
- Section 2.26 “Officer” means a duly elected or appointed officer of the Association.
- Section 2.27 “Open Space” is owned by the Association.
- Section 2.28 “Owner” means any Person who holds record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the Purchaser will be considered the Owner.
- Section 2.29 “Person” means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.
- Section 2.30 “Plat” means the Amended Plat for The Valley at Winter Park, filed for record with the Grand County Recorder’s Office as Reception No. 2001-002136, and also means and includes any and all amendments thereto which MAY be made during the course of time.
- Section 2.31 “Purchaser” means a Person who acquires legal title to the fee simple interest in any Lot or portion thereof.
- Section 2.32 “Rules and Regulations” means any instruments adopted by the Association for the regulation and management of the Community, as the same MAY be amended over the course of time.
- Section 2.33 “Quorum” means more than 35 percent of the total votes of the Owners, voting in person or by proxy, except as otherwise required by law or the Articles.
- Section 2.34 “Share of Common Expenses” means the share of Common Expenses allocated to each Lot in accordance with the terms and conditions of Section 8.2 below.
- Section 2.35 “Single Family Residential Use” means the permitted development, use and occupancy of a Lot within a portion of the Community for the construction and location of a single building improvement located within a single Lot which contains one primary living unit, together with permitted accessory uses.
- Section 2.36 “Special Assessments” is described in Section 8.5 below.
- Section 2.37 “The Valley at Winter Park Water District” means the Water District created to service the Property.

ARTICLE III  
LOTS AND COMMON AREAS

- Section 3.1      Lots. The Community includes a total of 48 Lots, the boundaries and identifying numbers of which are shown on the Plat.
- Section 3.2      Common Areas. All Common Areas are owned by the Association. The Lot Owners' forth in Section 8.2 of this Declaration, Exhibit C, and the Bylaws.

ARTICLE IV  
THE ASSOCIATION

- Section 4.1      Formation of the Association. The Association has been formed as a Colorado nonprofit corporation.
- Section 4.2      Purposes and Powers
- 4.2.1            The Association's purposes are:
- (a)            to manage, operate, insure, construct, improve, repair, replace and maintain the Common Areas as shown on Exhibit B.
  - (b)            to provide certain facilities, services and other benefits to the Owners;
  - (c)            to administer and enforce the covenants, restrictions, conditions, reservations and easements hereby created;
  - (d)            to levy, collect and enforce the Assessments, charges and lines imposed pursuant to these Declarations;
  - (e)            to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements with any governmental entity or any other Person, which considers the sharing of expenses among the Association and such other Persons for improvements, facilities and services that serve the Association and such other Persons;
  - (f)            to take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners; and
  - (g)            to regulate and manage the Community.
- 4.22            The Association MAY, unless expressly prohibited by law or any of the Association Documents.
- (a)            exercise any powers conferred to it by the Act or any Association Document; take any and all actions that it deems necessary or advisable to fulfill its purposes
  - (c)            exercise all powers that MAY be exercised according to the laws of the State of Colorado.

4.2.3 Without limiting paragraph 4.2.2 above, the Association SHALL:

- (a) grant easements, over, across and through Common Areas that it owns, pursuant to any government agency requirements.
- (b) borrow monies and grant security interests in the Common Areas that it owns and in the assets of the Association as collateral therefore, as it deems necessary to perform the duties and responsibilities of the Association;
- (c) make capital improvements, repairs and replacements to the Common Areas; and
- (d) hire and terminate managing agents and other employees, agents and independent contractors.

Section 4.3 Association Documents.

4.3.1 This Declaration creates the Community and sets forth certain covenants, restrictions, conditions, reservations, easements, Assessments, charges and liens applicable to the Community. The Articles create the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations provide for the regulation and management of the Community.

4.3.2 SHOULD there be any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration SHALL control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles SHALL control. If there is any conflict or inconsistency between the terms and conditions to the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws SHALL control.

Section 4.4 Membership. Every Owner SHALL be a Member of the Association. No Owner, whether one or more Persons, SHALL have more than one membership per Lot owned. If a Lot is owned by more than one Person, all co-Owners SHALL be entitled to the privileges of membership, subject to the restrictions set forth in this Declaration, and in the Bylaws, and all co-Owners SHALL be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural Person MAY be exercised by the Member or the Member's spouse. The membership rights of an Owner that is a corporation, partnership or other legal entity SHALL be exercised by the individual designed from time to time by the Owner in a written instrument provided to the Secretary of the Association. Upon transfer of record title to any Lot, the new Owner SHALL provide the Board with a copy of the deed of conveyance and of any trust deed or Mortgage and the Board SHALL then record the transfer in the books of the Association.

Section 4.5 Books Records and Financial Statements. The Association SHALL allow Owners, Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association, when requested, during normal business hours and under other reasonable circumstances. The Association MAY charge a reasonable fee for copying such materials.

ARTICLE V  
VOTING

Section 5.1 Voting

- 5.1.1 Each Lot SHALL be entitled to one vote, regardless of the number of Owners of the Lot, provided all dues and Assessments are paid to date relating to such Lot. Fractional voting SHALL not be allowed. If any Owner casts a vote representing a certain Lot, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of the Lot, unless objection is made by an Owner of the Lot to the Person presiding over the meeting at the time the vote is cast. If the Owners of a Lot cannot agree among themselves how to cast their vote on a particular matter, they SHALL lose their right to vote on such matter. If more than one vote is cast for any particular Lot, none of such votes SHALL be counted and all such votes SHALL be deemed null and void.
- 5.1.2 In any election of Directors to the Executive Board, every Lot SHALL have the number of votes equal to the number of Directors to be elected. Cumulative voting (voting more than once for any one Person) is prohibited in the election of Directors of the Executive Board or for any other purpose.
- 5.1.3 The Association SHALL not have any voting rights for any Lot owned by the Association.

ARTICLE VI  
EXECUTIVE BOARD

Section 6.1 Number and Election of Directors, and Composition of Board. The Executive Board SHALL consist of a minimum of three Directors, two-thirds (2/3) of which must be Lot Owners. SHOULD a corporation, partnership, or other legal entity own a Lot, the corporation, partnership or applicable entity MAY designate one Person to represent their/its Lot, allowing the designee to be elected to the Board. The initial Directors SHALL hold office until the election or appointment of their successors at the first annual meeting. Thereafter, subject to the terms and conditions of Sections 6.4 and 6.5 below, each Director will hold office for a term of one year and the Owners SHALL elect the Directors at the annual meetings.

Section 6.2 Specific Powers and Duties. Without limiting the generality of powers and duties set forth in Section 6.3 below, the Declaration and the Articles, the Executive Board will have the following powers and duties, subject only to applicable requirements of the Act:

- 6.2.1 To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration.
- 6.2.2 To establish, make, amend from time to time, and enforce compliance with such reasonable Rules and Regulations as MAY be necessary for the operation, use, and occupancy of the Community, subject to the provisions of the Declaration. A copy of such Rules and Regulations will be delivered or mailed to each Owner promptly after adoption.
- 6.2.3 To keep in good order, condition and repair the Common Areas. No approval of the Owners is required for expenditures for this purpose, except as otherwise required by the Declaration or these Bylaws.

6.2.4 To fix, determine, levy, and collect the prorated annual Assessments to be paid by each of the Owners toward the gross expenses of the Community, and to adjust, decrease or increase the

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amount of the Assessments, and to credit any excess of Assessments over expenses and cash reserves to the Owners against the next succeeding Assessment period.

6.2.5 To designate and remove personnel necessary for the operation, maintenance, repair and replacement of the Common Areas.

6.2.6 To levy and collect Special Assessments whenever, in the opinion of the Board, it is necessary in order to meet increased operating or maintenance expenses or costs, or additional capital expenses, or because of emergencies. All Special Assessments will be in statement form and will set forth in detail the various expenses for which the Special Assessments are being made.

6.2.7 To levy and collect Default Assessments for violation of any Association Document or because the Association has incurred an expense on behalf of an Owner.

6.2.8 To collect delinquent Assessments by suit or otherwise and to enjoin or seek damages from an Owner as provided in the Declaration and these Bylaws; and to exercise other remedies for delinquent Assessments as set forth in the Declaration.

6.2.9 To fix, determine, levy and collect the working capital funds to be paid by each of the Owners towards the working capital account of the Association, and to adjust, decrease or increase the amount of working capital funds collected from each Owner as provided in the Declaration.

6.2.10 To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration and these Bylaws, and subject to the limitations of the Act, and to authorize the appropriate Officers to execute all such instruments evidencing such indebtedness as the Board of Directors MAY deem necessary and such indebtedness SHALL be the several obligation of all Owners in the same proportions as they share Common Expenses; provided, however, that the Board will not borrow more than \$50,000 or cause the Association to be indebted more than \$50,000 at any one time without the prior approval of a two-thirds (2/3) vote of the Owners present and voting in person or by proxy on the issue; and provided further, that the Board will not cause the encumbrance of the Common Areas without the prior approval of two-thirds (2/3) of the votes of the Owners present and voting in person or by proxy on the issue in accordance with the requirements of the act and prior approval of fifty-one (51%) of the votes of Eligible Mortgage Holders (based on one vote for each Mortgage owned).

6.2.11 To dedicate, sell or transfer all or any part of the Common Areas to any public, governmental or quasi governmental agency, authority, or utility for such purpose and subject to such conditions as MAY be agreed to by the Owners, and subject to such additional limitations as MAY be agreed to by the Owners, and subject to such additional limitations as MAY be set forth in the Declaration or the Act, including without limitation the requirements of obtaining the prior approval of two-thirds (2/3) of Owners present and voting in person or by proxy on the issue in accordance with the requirements of the Act and the prior approval of fifty-one percent (51%) of the votes of Eligible Mortgage Holders (based on one vote for each Mortgage owned).

6.2.12 To enter into contracts within the scope of their duties and powers.

6.2.13 To establish a bank account for the operating account of the Association and for all separate funds as required or deemed advisable by the Executive Board.

- 6.2.14 To cause to be kept and maintained full and accurate books and records showing all receipts, expenses or disbursements and to permit examination thereof by Owners or their Mortgagees during convenient weekday business hours.
- 6.2.15 To cause any and all access roads and roadways in and to the Community to be maintained to the extent those facilities are within the jurisdiction or control of the Association, subject to the provisions of the Declaration.
- 6.2.16 To maintain and remove snow from any common roadways in the Community and to maintain the trees, shrubs and other vegetation, and any sprinkler or other irrigation system located on the Common Areas for the benefit of the Owners.
- 6.2.17 To cause to be maintained the insurance coverage (including without limitation fidelity insurance, or in its place, a bond covering the Board, the Officers and any other persons charged with handling Association funds) as MAY be necessary to comply with the requirements of the Declaration, these Bylaws and the Act.
- 6.2.18 In general, to carry on the administration of the Association and to do all those things necessary and responsible for the Community, in accordance with the Declaration and the requirements of the Act.
- 6.2.19 To delegate to any Person or entity such duties or responsibilities as MAY be necessary or responsible for efficiently performing a function, and to agree to assess to the Owners a reasonable fee for such function, except that the duties set forth in subparagraphs 6.2.4, 6.2.6, 6.2.7, and 6.2.9 of this Section 6.2 and duties reserved to the Board by law will not be so delegated.
- 6.2.20 To prepare a budget before the close of each fiscal year of the Association and submit the budget to the Association, in accordance with this Declaration and the requirements of the Act.
- Section 6.3 Executive Board Limitations. The Executive Board MAY not act on behalf of the Association to:
- 6.3.1 Amend the Declaration
- 6.3.2 Terminate the Association, the Declaration or the Community
- 6.3.3 Elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of any Director's term; or
- 6.3.4 Determine the qualifications, powers and duties, or terms of office of Directors.
- Section 6.4 Removal of Directors. Unless otherwise forbidden in this Declaration or any other Association Document to the contrary, the Owners, by a two-thirds (2/3) vote of all Lots represented and entitled to vote at any meeting at which a Quorum is present, MAY remove any Director, with or without cause.

ARTICLE VII  
INSURANCE

- Section 7.1 Insurance Required to be Obtained by the Association. The Association SHALL obtain and maintain all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Executive Board deems necessary.
- Section 7.2 Adjustments. Any loss covered by insurance maintained by the Association SHALL be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss SHALL be paid in accordance with the terms and conditions of the Act.

ARTICLE VIII  
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

- Section 8.1 Purpose of Assessments. Assessments SHALL be used for the purpose of enforcing and administering this Declaration and the Rules and Regulations adopted hereunder, including the Guidelines of the Architectural Design and Review Committee, and more specifically, the following:
- 8.1.1 Each Owner, by accepting a deed to a Lot (whether or not it SHALL be expressly stated in such deed) SHALL be deemed to have covenanted and agreed, to pay to the Association all:
- (a) General Assessments;
  - (b) Special Assessments;
  - (c) Specific Assessments;
  - (d) Default Assessments; and
  - (e) Other charges
- that the Association is required or permitted to levy or impose on such Owner or such Owner's Lot pursuant to this Declaration or any other Association Document.
- 8.1.2 Notwithstanding the definition of the term "Owner":
- (a) A Person who becomes Owner of a Lot through a foreclosure sale SHALL be personally liable at such time a foreclosure deed is issued for all past and future Assessments and other charges that the Association is required or permitted to levy or impose on that Lot or on the Owner of that Lot.
  - (b) A Person who becomes Owner of a Lot by deed-in-lieu of foreclosure SHALL be personally liable on the date the Owner executes the deed-in-lieu of foreclosure for all past and future Assessments and other charges that the Association is required or permitted to levy or impose on that Lot or on the Owner of that Lot.
- 8.1.3 No Owner SHALL be exempt from liability for any such Assessment or other charges by waiving

the use or enjoyment of any Common Areas or by abandoning a Lot against which such Assessments or other charges are made.

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8.1.4 Each Owner SHALL be personally liable for all Assessments and other charges levied on such Owner or such Owner's Lot during the period of such Owner's ownership of the Lot. If there is more than one Owner of a Lot, each Owner SHALL be jointly and severally liable with the other Owners of the Lot for all Assessments and other charges levied on the Lot or any Owner of the Lot.

8.1.5 Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other amount, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, MAY be recovered by a suit for a money judgment by the Association with or without foreclosing or waiving any Assessment Lien securing the same.

Section 8.2 Share of Common Expenses.

8.2.1 Except as otherwise set forth in this Declaration, the Association's Common Expenses SHALL be allocated among the Lots as set forth in this Section 8.2 The Share of Common Expenses allocated to a Lot SHALL be expressed as a percentage and calculated in accordance with the following formula:

$$\text{One Lot's Share of Common Expenses} = \frac{1}{48} \times 100$$

8.2.2 The Share of Common Expenses assigned to the initial 48 Lots created within the Community are set forth on Exhibit C, attached hereto and made a part hereof.

8.2.3 Common Expenses MAY include, but SHALL not be limited to, the following:

- (a) Repairing, replacing, renovating and maintaining any of the Common Areas not made the responsibility of the Owners, the maintenance and/or repair of the roads, and/or other provisions of this Declaration;
- (b) Obtaining and maintaining insurance in accordance with the provisions of Article VII of this Declaration;
- (c) Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements, and other purposes;
- (d) Carrying out all other powers, rights and duties of the Association specified in this Declaration and the Bylaws;
- (e) Generally, addressing any other expenses necessary to meet the primary purposes of the Association.

Section 8.3 Budgets

8.3.1 Prior to the first levy of a General Assessment, and thereafter on or before a date designated each fiscal year, the Executive Board SHALL adopt a proposed annual budget for the Association for the following fiscal year that sets forth:



- (a) the Executive Board's estimates of Common Expenses for the next fiscal year;

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- (b) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments; and
- (c) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments.

8.3.2 Prior to the homeowners Association annual meeting, the Executive Board SHALL deliver a summary of the annual budget to the Owners for ratification during the next annual meeting.

8.3.3 If the Executive Board deems it necessary or advisable to amend an annual budget, subsequent to Owner ratification, the Executive Board MAY adopt an amendment to the annual budget without Owner ratification, and deliver a summary of the amendment to the Owners.

Section 8.4 General Assessments.

8.4.1 After the Board has adopted an annual budget, the Association SHALL levy an Assessment for Common Expenses (a "General Assessment") on each Lot. The amount of the General Assessment levied against a Lot SHALL equal the product obtained by multiplying: The amount established in the annual budget as the amount of Common Expenses to be raised by General Assessments, by that Lot's Share of Common Expenses.

8.4.2 The Owners SHALL pay the General Assessments levied against their respective Lots in such periodic installments as MAY be required by the Association.

8.4.3 When the Board has amended the General Assessment portion of the annual budget pursuant to paragraph 8.3.2, the amount of the General Assessment levied against each Lot SHALL be adjusted accordingly, as SHALL the amount of each Owner's periodic installments.

8.4.4 If the Executive Board does not approve an annual budget for any fiscal year prior to January 1 of that year, the Owners SHALL pay periodic installments of the General Assessment to the Association at the rate payable during the prior fiscal year. Once the new annual budget is in place, the Association will levy against each Lot the General Assessment for the current calendar year and each Owner's periodic installments will be adjusted as necessary to pay the new General Assessment. These Assessments will be equal periodic installments over the remaining fiscal year, giving the Owners credit, in such manner as the Executive Board deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during the calendar year.

8.4.5 In the event the Association fails to levy a General Assessment for any fiscal year, this action SHALL not be deemed a waiver, modification or release of a Lot Owner's responsibility for the Share of Common Expenses allocated to each Owner's Lot.

Section 8.5 Special Assessments. In addition to other authorized Assessments, the Association MAY levy Special Assessments from time to time to cover unbudgeted expenses, expenses in excess of those budgeted, or capital costs associated with new improvements in accordance with the terms of this Section 8.5 Such Special Assessment MAY be levied against the entire membership if the Special Assessment is for Common Expenses. Special Assessments SHALL be payable in such manner and at such times as determined by the Board, MAY be payable in installments extending beyond

the fiscal year in which the Special Assessment is approved.

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Section 8.6 Default Assessments.

8.6.1 Unless stated otherwise in this Declaration, if any Common Expense is caused by:

- (a) The negligence or misconduct of an Owner or an Owner's Guest; or
- (b) A violation of any covenant or condition of an Association Document by an owner or an Owner's Guest

The Association MAY levy an Assessment for such Common Expense against such Owner's Lot. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon an Owner for the Owner's violation of any covenant or condition of any Association Document are each referred to herein as a "Default Assessment".

8.6.2 Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, pursuant to Section 8.3 above.

8.6.3 The Owner of the Lot against which the Association seeks to levy the Default Assessment SHALL be provided notice and an opportunity to be heard. Owners of Lots against which Default Assessments have been levied SHALL pay such Default Assessments as and when required by the Association.

Section 8.7 Assessment Lien.

8.7.1 The Association SHALL have a lien on each Lot for any Assessment levied against that Lot and any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against its Owner under any Association Document (the "Assessment Lien"). The Assessment Lien SHALL secure all of the foregoing obligations of an Owner for the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien SHALL secure each installment from the time it becomes due, including the due date set by any valid Association's acceleration of installment obligations.

8.7.2 An Assessment Lien is prior to all other liens and encumbrances on a Lot, except:

- (a) liens and encumbrances recorded prior to the recordation of this Declaration;
- (b) liens for real estate taxes and other governmental assessments or charges against the Lot; and
- (c) a First Mortgage which was recorded before the date on which the assessment sought to be enforced became delinquent.

8.7.3 Notwithstanding the terms and conditions of subparagraph 8.7.2 (c) above, an Assessment Lien is also prior to a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent to the extent permitted by the Act.

8.7.4 The recording of this Declaration constitutes record notice and perfection of any Assessment Lien on each Lot. No further recordation of any claim of any Assessment Lien is required.

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8.7.5 An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six years after the full amount of the Assessment secured thereby becomes due.

8.7.6 This Section 8.7 does not prohibit actions or suits to recover sums secured by an Assessment Lien or to prohibit the Association from taking a deed in lieu of foreclosure.

8.7.7 In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court MAY appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. A court MAY order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

8.7.8 An Assessment Lien MAY be foreclosed in like manner as a mortgage on real estate. Periodic Assessments SHALL be payable during the period of foreclosure of an Assessment Lien.

8.7.9 The Association SHALL be entitled to costs and reasonable attorney's fees incurred by the Association in a judgment or decree in any action or suit brought by the Association, or in any collection efforts, or enforcement or protection of its lien (whether or not as part of any lawsuit or litigation).

Section 8.8 Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice as MAY be required by the Act SHALL not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner SHALL continue to pay Assessments on the same basis as for the last year from which such Assessments were made, if any, until a new Assessment is made, at which time the Association MAY retroactively assess any shortfalls in collections.

Section 8.9 Waiver of homestead Exemptions. By acceptance of the deed or other instrument of conveyance of a Lot, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado revised Statues, as amended, as the same MAY apply to the Assessment Lien.

Section 8.10 Estoppel Certificates: Notices to Mortgagees.

8.10.1 The Association SHALL furnish to an Owner or such Owner's designee or to a Mortgagee or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Associations' registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement SHALL be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested to the inquiring party, then the Association SHALL have not right to assert the priority of its Assessment Lien upon the Lot for unpaid Assessments which were due as of the date of the request.

8.10.2 If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Lot subject to a First Mortgage held by the First Mortgagee, the Association SHALL report to the First Mortgagee any unpaid Assessments levied against such Lot that remain unpaid for more than sixty days after the same SHALL have become due. The First Mortgagee MAY pay any such unpaid Assessment, together with any and all costs and expenses incurred with

respect to the Assessment Lien securing such unpaid Assessment, and upon such

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payment, the First Mortgagee SHALL have a lien on the Lot for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

Section 8.11 Reserve Fund. The Association MAY establish a reserve fund to pay for Common Expenses through funds collected through Assessments. The Association MAY replace funds withdrawn from the reserve fund with funds collected through Assessments.

#### ARTICLE IX DAMAGE OR DESTRUCTION

Section 9.1 Damage or Destruction to Common Areas. The Association SHALL respond to any damage to, or destruction of, any Common Areas owned by the Association in accordance with the terms and conditions of the Act.

Section 9.2 Damage or Destruction to a Lot. Each Owner of a Lot SHALL repair or replace any damage to or destruction of the Owner's Lot, as soon as is reasonably practical after such damage or destruction occurs.

#### ARTICLE X UTILITY AND OTHER SERVICES

Section 10.1 Gas, Electric and Telephone Services. Gas, electric and telephone service connections are installed at or adjacent to the property lines of each Lot. The Owner of a Lot SHALL be responsible for obtaining gas, electric and telephone services for its Lot directly from the utility or service company providing same, and SHALL pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, use fees, tap fees, connection and hook-up fees, and all costs incurred for the construction and installation of service lines, meters and facilities serving the improvements on its Lot.

Section 10.2 Water Services. A Water District, called The Valley at Winter Park Water District, has been created to service the Community, and service connections have been installed at or adjacent to the property lines of each Lot. The Owner of a Lot SHALL be responsible for obtaining services for its Lot directly from the Water District and SHALL pay all costs, expenses, fees, rates and other charges incurred, including, without limitation, availability fees, use fees, tap fees, connection and hook-up fees, and all costs incurred from the construction and installation of service lines, meters and facilities serving the improvements on its Lot. All Owners must connect the Improvements they construct on their Lots to the water system. The Owner(s) must have their connection design approved by the Water District Board and the County's Water Quality Control Board. Water meters are required in each home. Verification of the installation of said water meters will be required by the State Water Commissioner or licensed plumber or engineer prior to issuance of a certificate of occupancy for any home or other structure built on any Lot. Private wells and other individual water systems are strictly prohibited. All Owners must comply with all Rules and Regulations of the Water District whenever adopted, including, but not limited to, restrictions or curtailment of water usage for irrigation outside of the home.

Section 10.3 Wastewater Treatment. The design of each individual sewage disposal system installed within the Community SHALL be in compliance with sound professional engineering criteria and specifications for the type of soils within which each such individual sewage disposal system will be installed. The design of each individual sewage disposal system SHALL incorporate an

inspection port to facilitate the annual inspection of the same. Individual sewage disposal systems SHALL be subject to annual inspection by the Association or its designee in accordance with this Declaration and the Rules and Regulations. No individual sewage disposal system SHALL be constructed, altered or allowed to remain or

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to be used on any Lot without the Owner thereof first having applied for and receiving the necessary approvals from the appropriate local and state agencies, and the design of such system must be approved by the Architectural Design and Review Committee. The design engineer of each individual sewage disposal system SHALL provide supervision during the installation of the same and verify to Grand County, Colorado that the system has been installed in accordance with its intended design. An engineering report which includes information concerning soils profile holes, deep boring holes, representative percolation tests and percolation rates for each representative percolation test, has been prepared and is on file at the Grand County Department of Planning and Zoning. All prospective buyers of Lots are strongly encouraged to review this report prior to making their purchase decision. By purchasing a Lot, each Owner SHALL be deemed to have determined the constructability of the individual sewage disposal system which could be constructed upon their Lot.

Section 10.4 Snow Removal.

- 10.4.1 If Grand County, Colorado, fails to regularly plow and remove snow from any road, common driveway, access easement or emergency access easement included within the Community, the Association SHALL plow and remove the snow as MAY be necessary to permit the safe and efficient use of same, and the Common Expenses incurred SHALL be allocated among the Lots in accordance with their Shares of Common Expenses and charged to the Owners as General Assessments.
- 10.4.2 Each Owner SHALL plow and remove snow from the private driveways and sidewalks located upon and serving solely such Owner's Lot at its cost and expense.
- 10.4.3 Although all roads have been conveyed to Grand County, and all roads have been constructed to Grand County specifications, there is no warrant that Grand County will accept any roads for snow removal.

Section 10.5 Road Maintenance and Repair.

- 10.5.1 If Grand County, Colorado, fails to maintain in good order and condition any road, common driveway, access easement or emergency access easement within the Community, the Association SHALL maintain and repair the same and the Common Expenses incurred SHALL be allocated among the Lots in accordance with their Shares of Common Expenses and charged to the Owners as General Assessments.
- 10.5.2 Each Owner SHALL maintain in good order and condition all private driveways located upon and serving solely such Owner's Lot at its cost and expense.
- 10.5.3 Although all roads have been conveyed to Grand County, and all roads have been constructed to Grand County specifications, there is no warrant that Grand County will accept any roads for maintenance or repair.

Section 10.6 Drainage Easement.

- 10.6.1 The Association SHALL maintain in good order and condition the drainage easements included within the definition of Common Areas. The Common Expenses incurred in connection therewith SHALL be allocated among the Lots in accordance with their Shares of Common Expenses and

charged to the Owners as General Assessments.

10.6.2 No Owner MAY take any action that interferes with the historical surface drainage across the Owner's Lot. No Owner MAY make any improvement or any earthwork that creates an obstruction to surface flow, resulting in a back-up of water onto an adjacent Lot, property.

ARTICLE XI  
MAINTENANCE OF COMMON AREAS AND LOTS

Section 11.1 Maintenance of Common Areas. The Association SHALL maintain the Common Areas and the improvements and landscaping located within the Community in good order and repair and SHALL otherwise manage and operate the Common Areas as it deems necessary or appropriate, unless provided otherwise in this Declaration.

Section 11.2 Maintenance of Lots.

11.2.1 Each Owner, at Owner's sole cost and expense, SHALL maintain their Lot and the improvements and landscaping thereon in good order and repair.

11.2.2 Each Owner SHALL ensure that such Owner's Lot is fully landscaped in accordance with plans approved by the Architectural Design and Review Committee:

- (a) within forty-five days following such Owner's receipt of a certificate of occupancy for its home, provided it receives its certificate of occupancy prior to June 30 of a calendar year, or
- (b) by June 30 of the following calendar year, provided it receives its certificate of occupancy after June 30 of the prior calendar year.

11.2.3 If, in the reasonable judgment of the Association, an Owner fails to maintain the Owner's Lot, the landscaping located thereon or the improvements located thereon in good order and repair, and such failure remains uncured for more than thirty days after the delivery of written notice to such Owner, the Association MAY enter upon such Lot and perform such maintenance or repair as the Association deems necessary or advisable and charge all costs and expense incurred by the Association relating therewith to such Owner. The Owner SHALL pay the same within thirty days after its receipt of an invoice. Any such charges levied by the Association SHALL be deemed a Default Assessment.

Section 11.3 Mechanic's Liens and Indemnification. Any labor performed or materials furnished and becoming part of a Lot with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner SHALL not be the basis either for filing a lien against the Lot of any other Owner not expressly requesting or consenting to the same, or against the Common Areas. Each Owner SHALL indemnify and hold harmless each of the other Owners and any Mortgagee from and against all liability arising from any claim or lien against the Lot of any other Owner or against the Common Areas for construction performed or for labor, materials, services or supplies becoming part of the Owner's Lot at the Owner's request.

ARTICLE XII  
ARCHITECTURAL DESIGN AND REVIEW COMMITTEE

Section 12.1 Philosophy and General Rule.

- 12.1.1 The area in which the Community is located is one of great natural beauty which Association intends to **protect and enhance**. While recognizing that development of the Community as described in this Declaration will inevitably entail disturbance of local ecosystems, it is the goal of the Association that this disturbance be minimized to the greatest extent reasonably possible and that structures and other improvements within the Community be designed and constructed so as to further this goal.
- 12.1.2 No structure SHALL be placed, erected, or installed upon any Lot, and no improvements (including, without limitation, clearing, excavating, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) SHALL take place except in compliance with this Article and approval of the ADRC as provided herein.
- 12.1.3 Any Owner MAY remodel, paint or redecorate the interior of structures on such Owner's Lot without approval. However, modifications to the interior of screened or unscreened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot SHALL be subject to approval. No approval SHALL be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.
- 12.1.4 All dwellings constructed SHALL be designed by and built in accordance with the plans and specifications of a licensed architect, licensed building designer, or person qualified and approved by the ADRC. Construction on each Lot will require the approval of a road cut permit from the Grand County Road and Bridge Department. Building permit applications submitted to the Grand County Building Department for construction of dwellings on the Lots SHALL include plans and specifications for engineered building foundations and under-foundation drain systems.
- 12.1.5 This Article SHALL not apply to improvements to the Common Areas by or on behalf of the Association.

Section 12.2 The Architectural Design and Review Committee (ADRC) and Its Functions.

- 12.2.1 The members of the ADRC SHALL be appointed by the Board. Initially, the Board SHALL appoint at least three, but not more than five, persons as ADRC members. SHOULD there be three members, one member will be appointed and serve for a one (1) year term, the second member will be appointed and serve for a two (2) year term, and the third member will be appointed and serve for a three (3) year term. SHOULD there be more than three members on the ADRC, additional members will each be appointed and serve for one year terms. Members need not be Owners or representatives of Owners and MAY, but need not, include architects, engineers and similar professionals. Members of the ADRC SHALL serve at the pleasure of the Board; their tenure MAY be terminated at any time, with or without cause.
- 12.2.2 The members of the ADRC SHALL not be entitled to any compensation for services performed as members of the ADRC but SHALL be entitled to reimbursement of expenses incurred.

Notwithstanding the foregoing, however, nothing contained herein SHALL preclude any member of the ADRC from performing services for the ADRC in any capacity other than as a member of the ADRC such as an architect or engineer performing detailed professional evaluations of proposed

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building plans and receiving compensation therefore, so long as the arrangement has been approved by a majority of disinterested ADRC members.

- 12.2.3 The ADRC SHALL have exclusive jurisdiction and responsibility for administration of the Architectural Design and Review Guidelines and for the review of applications for construction and modifications under this Article XII. The Board MAY establish and charge reasonable fees for the ADRC's review of applications hereunder and MAY require such fees to be paid in full to the ADRC prior to review. In addition, the ADRC MAY impose, in connection with any particular review, an additional fee to cover its anticipated expenses for conducting such review, including the anticipated cost of obtaining professional guidance from a licensed architect or other appropriate licensed professional. In the event such an additional fee is imposed, the Board MAY require that the additional fee be paid in full prior to ADRC review.

Section 12.3 Architectural Design and Review Guidelines and Procedures.

- 12.3.1 The Architectural Design and Review Guidelines SHALL apply to all construction activities within the Community that are subject to review as provided in Section 12.1 The Architectural Design and Review Guidelines MAY contain general provisions applicable to all of the Lots, as well as specific provisions which vary from one Lot to another, depending upon the location, unique characteristics, and intended use thereof.
- 12.3.2 The Board SHALL adopt the Architectural Design and Review Guidelines at its initial Executive meeting and thereafter SHALL have sole and full authority to amend them. Any amendments to the Architectural Design and Review Guidelines SHALL apply to construction and modifications commenced after the date of such amendment only and SHALL not apply to structures previously approved once construction or modification has commenced.
- 12.3.3 The ADRC SHALL make the Architectural Design and Review Guidelines available to Owners and Builders who seek to engage in development or construction within the Community and all such persons SHALL conduct their activities in accordance with such Design and Review Guidelines.
- 12.3.4 Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements, SHALL be submitted to the ADRC for review and approval (or disapproval). Any disapproval SHALL be specific. In addition, information concerning a plan for an individual sewage disposal system, drainage, lighting, plans and specifications for an engineered building foundation and under-foundation drain system and other features of proposed construction SHALL be submitted as applicable. In reviewing each submission, the ADRC MAY consider, among other things, the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surround structures, topography, and finish grade elevation.
- 12.3.5 In the event the ADRC fails to approve or to disapprove any application within sixty (60) days after submission of all information and materials reasonably requested, the application SHALL be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, SHALL be inconsistent with the Architectural Design and Review Guidelines unless a variance has been granted in writing by the ADRC pursuant to Section 12.3.7.



- 12.3.6 Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, SHALL not be deemed to

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constitute a waiver of the right to withhold approval as to any similar proposals, plans, and specifications, drawings, or other matters subsequently or additionally submitted for approval.

- 12.3.7 The ADRC MAY authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances MAY only be granted, however, when unique circumstances dictate and no variance SHALL (1) be effective unless in writing; (2) be contrary to this Declaration; or (3) forbid the ADRC from denying a variance in other circumstances. For purposes of this paragraph 12.3.7, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing SHALL not be considered a hardship warranting a variance.

Section 12.4 Enforcement.

- 12.4.1 Any structure or improvement placed or made in violation of this Article XII SHALL be deemed to be nonconforming. Upon written request from the Board, Owners SHALL, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. SHOULD an Owner fail to remove and restore as required, the Board or its designees SHALL have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, MAY be assessed against the benefited Lot and collected as a Specific Assessment.

- 12.4.2 Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provision of this Article XII and the Architectural Design and Review guidelines, MAY be excluded by the Board from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its Officers, nor Directors SHALL be held liable to any person for exercising the rights granted by this paragraph 12.4.2.

- 12.4.3 I In addition to the foregoing, the Association SHALL have the authority to pursue all legal and equitable remedies available to enforce the provisions of this Article XII and the decisions of the ADRC.

- Section 12.5 Security Deposit. Prior to the commencement of any work approved by the ADRC, the Owner or other Person representing such Owner wishing to commence such work SHALL pay to the ADRC, in addition to the fees described in Section 12.2.3, a deposit (the "security deposit") which SHALL secure that Owner's or other Person representing Owner prompt and faithful compliance with the terms and conditions of this Article XII, including, without limitation, the requirement that any construction or modification be completed according to the plans approved by the ADRC, and that any damage done to the roads, easements or Common Areas will be properly repaired and re-vegetated, if required. In the event such damage or re-vegetation has not been accomplished within thirty (30) days following the issuance of a Certificate of Occupancy for the dwelling or, in the event here is no dwelling involved, within thirty (30) days after substantial completion, as determined by the ADRC, then the deposited funds MAY be used by the ADRC to repair the damage or complete the re-vegetation. Prior to the use of such funds, however, the ADRC SHALL

give the person making the security deposit ten (10) days' written notice of its intention to make use of the security deposit. Notice SHALL be given by certified mail to the address or any address shown on the plans and SHALL be posted on the Lot. SHOULD the deficiency be remedied during the ensuing ten (10) days, then the security deposit SHALL be refunded. The security deposit SHALL initially be in the amount of \$2,000.00, but the ADRC MAY adopt a greater or lesser amount, or MAY adopt a formula to determine an amount, as previous experience and/or related situations dictate. The ADRC

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MAY also provide for different amounts for different types of projects and MAY provide for retention of the security deposit for a period not to exceed one (1) year after substantial completion in the event re-vegetation is required.

Section 12.6 Limitation of Liability. Review and approval of any application pursuant to this Article XII is made on the basis of aesthetic considerations only and the ADRC SHALL not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, any committee, nor member of any of the foregoing SHALL be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. Any Owner or other Person representing the Owner submitting plans to the ADRC for approval, by doing so, agrees and covenants that such Owner will not bring any action or suit for damages against the Board, the ADRC, its members, or their advisers, employees, or agents which in any way relates to such plans or the decision of the ADRC in relation thereto. (This Section 12.6 does not prohibit a suit to compel the Board, the ADRC, its members, advisers, employees or agents to perform in accordance with this Declaration, the Rules and Regulations of the ADRC, and applicable law.)

### ARTICLE XIII DESIGN REQUIREMENTS AND ARCHITECTURAL STANDARDS

The ADRC has the right to review, in its reasonable discretion, all development described in Section 12.1.2 for conformance with the general purposes of this Declaration, including but not limited to, the following:

Section 13.1 Setbacks. No structure SHALL be located on any Lot within the following described setbacks:

13.1.1 Fifty (50) feet from the front of the Lot (the front of a Lot SHALL be that side of a Lot on which the roadway is located, but for Lots adjacent to more than one roadway, the front SHALL be the side facing the roadway to which the driveway access is located.)

13.1.2 Twenty-five (25) feet from the sides and rear or back of the Lot.

The Architectural Design and Review Committee MAY grant variances from these setback requirements due to a particular Lot configuration. Structures included decks, patios and overhangs, but not septic systems, leaching fields, driveways or landscaping.

Section 13.2 Fences and Walls. In order to maintain the open qualities of the Community and to minimize interference with the natural movement of wildlife, fencing SHALL be limited and is generally discouraged. Fencing or walls must be approved by the ADRC and, when approved, SHALL only be permitted in limited areas within Lots, but is strictly prohibited along the entire perimeter of Lots. No fences or walls SHALL be permitted to extend within the minimum building setback area set forth in Section 13.1 without the approval of the ADRC as provided in this Article XIII. Fences SHALL not exceed a height of 42" unless used as a screen wall adjacent to structures.

Section 13.3 Signs. The ADRC and/or the Executive Board MAY determine standards for the street signs and entry signs for The Valley at Winter Park Subdivision. There SHALL be no other signs except signs used to identify the residential addresses and/or names of occupants based on a standard approved by the ADRC and intersections provided by the Association. The area of any such sign SHALL not exceed six (6) square feet on any Lot. "For Sale" signs SHALL be permitted only on a temporary basis so long as they do not exceed four (4) square feet. Other man-made structures located along the roads for delivery or identification such as mailbox pedestals, entry monuments, gates, etc., SHALL only be permitted if approved by the ADRC and SHALL be standardized for all Lots.

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Section 13.4 Architectural Standards.

13.4.1 In its review of architectural plans, the ADRC SHALL be guided by the basic principals set forth in Article I and Section 12.1.1 The ADRC SHALL encourage architectural design incorporating the use of natural materials, steep roof pitches, colors that blend with the landscape and varied structural forms that adapt to the topography and natural surroundings of the site. These design criteria discourage imported design styles better suited to other regions, cultures or geography such as Tudor, Colonial, Victorian, etc.

13.4.2 The following design standards SHALL be followed for all structures:

- (a) Building Siting. All structures SHALL conform to the setback criteria set forth in the Plat and in this Declaration. No building will be allowed on any slopes of 30% or greater.
- (b) Driveway Access and Parking. Driveways SHALL be constructed on each Lot by the Lot Owner with no more than one access opening (except in the case of a circular driveway, two access openings SHALL be permitted) in a location approved by the ADRC. Driveway clearings SHOULD be not more than sixteen (16) feet in width and constructed to provide all-weather access to the building site. No dwelling SHALL be constructed unless a minimum of a two-car garage as well as adequate off-street parking to accommodate at least four automobiles is provided on the same Lot. The placement of the spaces SHALL be shown on the plans submitted to the ADRC prior to construction. All driveways and parking areas SHALL be adequately surfaced in accordance with the ADRC guidelines.
- (c) Structures. Materials, colors and building mass SHALL be generally regulated by the following standards:
  - (i) Natural materials SHOULD include high quality artificial stone, drivet, solid wood siding (preferably horizontal or diagonal), textured concrete, brick, colored stucco and/or glass. Roof materials MAY include heavy-weight asphalt shingles, raised metal seam sheeting or concrete tile, or comparable non-combustible materials. Metal or plastic trim, chimney flues, etc. SHALL be colored or painted to blend into the building materials and the ADRC MAY require the enclosure of such flues. Similarly, synthetic materials MAY be permitted if they are colored and textured to represent natural materials as solely determined by the ADRC. Log homes which use full-length dimensionally-cut logs are acceptable. The Architectural Design and Review Guidelines MAY allow the use of other materials for wall and roof surfaces, provided such materials are designed and located in harmony with surrounding structures and natural land features, and SHALL not be offensive in color in the opinion of the ADRC.
  - (ii) Colors SHALL include a limited range of natural wood tones such as rust red,

brown, ochre, gray, and green. Color hues SHALL be dark enough to blend into the landscape.

- (iii) Building structures SHALL provide for varied architectural forms. Simple geometric designs/structures such as saltboxes or A-frames are not consistent with these standards. Roof pitches SHALL be a minimum of 6/12, unless otherwise approved by the ADRC due to building design. Only one solid-fuel burning device will be allowed per Lot. Except for log homes described in Section 13.4.2(c)(i) above, modular homes and any other homes that are constructed off- site and assembled on a Lot are prohibited unless the ADRC, in its sole discretion, determines that any such home is consistent with these Declarations,

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the Architectural Design and Review documents, and, in general, the Community-wide standards. In no event SHALL mobile homes & Tiny Homes be permitted within the Community except in connection with active, ongoing construction on a Lot.

Section 13.5 Architectural Guidelines. Certain architectural guidelines SHALL be used by the ADRC to evaluate the suitability of plans and, although subjective, SHALL be the basis for approving plans that do not clearly adhere to the standards. If the structure is effectively screened from public view, the ADRC MAY accept variation from the standards in the use of materials, colors and building design/structure on a case by case basis only.

The intent of the ADRC review SHALL be to ensure uniform standards of high quality in the use of materials and workmanship, while allowing for individuality regarding each Lot's dwelling design.

Section 13.6 Landscaping. Landscaping on Lots and around buildings SHALL be subject to approval by the ADRC. There SHALL be a minimum of tree removal along driveways and in areas open to Public View. Irrigated areas SHALL be limited to entry and yard locations adjacent to buildings and kept to a minimum to limit water consumption. In no case SHALL irrigated areas exceed 1,000 square feet per Lot, except for approved drip irrigation systems. Irrigation or lawn watering is prohibited in the vicinity of individual sewage disposal systems.

Section 13.7 Clearing Plan.

13.7.1 Selective clearing of trees on Lots for completion of site improvements and/or providing views from a Lot SHALL be permitted upon submittal of a clearing plan to, and approval by, the ADRC. Any proposed tree removal plan SHALL be subject to compliance with any wildfire mitigation plan adopted by Grand County, Colorado, approval of the ADRC, and SHALL give proper consideration to the privacy of adjacent Lot Owners and public views.

13.7.2 Those trees proposed to be removed SHALL be marked with bright plastic ribbons at the time of submittal of the clearing plan, allowing adequate time for inspection by the ADRC. After receiving written notice from a Lot Owner, the ADRC SHALL have thirty (30) days to give written approval of the clearing plan and to confirm with spray paint markers which trees MAY be removed. Failure by the ADRC to approve or modify the clearing plan within thirty (30) days SHALL represent approval of the clearing plan. Request for approval of a clearing plan MAY be submitted at the time architectural building plans are submitted to the ADRC for approval. The ADRC MAY require re-vegetation or screen plantings in cleared areas as part of an approved plan. Any trees over 6 inches in diameter measured 18 inches from the ground removed without ADRC approval as either part of the building plans, a clearing plan, or by written consent of the ADRC, SHALL be in violation of this Declaration and the Owner of any Lot that is in violation SHALL be subject to a mitigation Assessment of up to \$500 per tree as determined by the ADRC and/or by

a re-vegetation requirement at the ADRC's sole discretion, but after notice and opportunity for hearing pursuant to Section 21.4 of this Declaration. Notwithstanding the foregoing, however, Owners MAY remove dead and diseased trees, brush or lifeless limbs without ADRC approval. When notified in writing by the ADRC of diseased vegetation or trees, fallen trees or trees damaged by natural causes, an Owner SHALL remove such within a reasonable time and at the Owner's Expense.

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If an Owner fails to comply, the Board or the ADRC MAY remove or cause such trees to be removed and charge the Owner for the cost thereof as a Specific Assessment.

- Section 13.8 Cleanup. In the event trees or brush are allowed to be felled or trimmed as provided herein, the Owner SHALL remove the remnants, including slash, from the Lot. Trees cut into firewood, stacked neatly and screened SHALL be deemed to meet the requirement of removal from the Lot. Stumps MAY be left if cut off at ground level, or they SHALL be removed and hauled away. In the event an Owner does not properly remove tree or brush remnants after having been given notice and a reasonable opportunity to cure, the Board or the ADRC MAY perform the clean up and charge the Owner for the cost thereof as a Specific Assessment.
- Section 13.9 Noxious Weed Control. The Association SHALL enforce the removal of noxious weeds as defined by the Grand County Noxious Weed Control provisions and requirements as recorded in the Grand County, Colorado real property records at Reception No. 96003640, SHALL notice appropriate public agencies when enforcement measures are required.
- Section 13.10 Continuity of Construction. The entire exterior of any building SHALL be completed within twelve months from ground breaking. In the event there is a violation of this requirement, or if construction is abandoned for a period in excess of ninety (90) days, the ADRC MAY assess a Specific Assessment against the Owner in an amount not less than \$100.00 per day. Such an Assessment MAY only be made after notice and opportunity for hearing pursuant to Section 21.4 of this Declaration. At such hearing, the only defense of failure to complete construction on a timely basis or abandonment of construction will be a circumstance beyond the Owner's control. A Certificate of Occupancy must be obtained within twenty-four (24) months after ground breaking. (Conflicts with 15.2.1) ...General Use Restrictions

#### ARTICLE XIV COVENANTS AND CONDITIONS

- Section 14.1 Covenants and Conditions. Except as otherwise provided herein, the covenants and conditions set forth in this Article XIV SHALL apply to all Lots and Common Areas of the Community.
- Section 14.2 Association Documents. Each Owner SHALL comply with, and SHALL require its Guest to comply with, all provisions of the Association Documents and the design guidelines and other Rules and Regulations, site plans and development constraints adopted by the Architectural Design and Review committee that apply to the Owner or the Owner's Lot.
- Section 14.3 Notice of Conveyance or Encumbrance.
- 14.3.1 Within 30 days after conveyance of a fee simple interest in a Lot or portion thereof or otherwise upon request by the Association, the grantee SHALL furnish a copy of the conveyance deed to the Association.
- 14.3.2 Within 30 days after encumbrance of a fee simple interest in a Lot or portion thereof or otherwise upon request by the Association, the Owner SHALL furnish the Association with a copy of the Mortgage.

Section 14.4 Use of Lots.

- 14.4.1 Except as otherwise expressly permitted by this Declaration, an Owner MAY use its Lot only for the construction of one single family detached dwelling to be occupied as a permanent or vacation residence for itself and its Guests.

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Section 14.5 Renting and Leasing.

- 14.5.1 Renting and leasing will be allowed if done independently for investment purposes. Renting/leasing will not be allowed for a period of less than 6 months. The rental/lease form must include appropriate language which describes any Association Rules and Regulations. A form must be signed by the renter/lessee which holds the Homeowners Association harmless. A copy of the completed lease and forms must be provided to the Association which includes the renters' name(s), telephone number, mailing address, and any other appropriate information. All rules which apply to Lot Owners will also apply to any and all renters/lessees (occupants). SHOULD an Owner rent/lease without properly informing the renter/lessee of any Association Rules and Regulations, and if Owner does not provide the Homeowners' Association with signed copies of the forms stated above, they are in direct violation of these Declarations and will be subject to Section 21.5, Violations and Hearing Procedures.
- 14.5.2 If an Owner chooses to rent/lease, they must sign a document stating they are responsible for any damage or destruction to any portion of the property, including but not limited to, signage, vegetation, etc., caused by the renter/lessee. Such repairs/replacement SHALL be at Owners' expense and such damage/destruction SHALL be remedied as soon as is reasonably practical.

Section 14.6 Wildlife.

- 14.6.1 All Owners SHALL acquire and review the following publications: "Living with Wildlife in Bear Country" prepared by the Colorado Department of Wildlife, and "Living with Wildlife in Mountain Lion Country" prepared by the Colorado Department of Wildlife.
- 14.6.2 With the exception of bird feeders, no Owner or its Guests MAY feed, bait, salt or otherwise attempt to attract wildlife to its Lot.

Section 14.7 Utilities. All electric, gas, water, telephone and other utility installations and connections from the boundary of a Lot to improvements located on such Lot SHALL be placed underground.

Section 14.8 Maintenance of Improvements. No buildings or other improvements on any Lot SHALL be permitted to fall into disrepair and each such building or other improvement SHALL at all times be kept in good condition and repair and adequately finished. If any building or other improvement is damaged or destroyed, then, subject to the approvals required from the Architectural Design and Review committee, such building or other improvement SHALL be immediately repaired or rebuilt or SHALL be demolished. If any such building or improvement is demolished, the Owner of the Lot on which such building or improvement was located in accordance with plans approved by the Architectural Design and Review Committee.

Section 14.9 Enforcement. The Association SHALL enforce the covenants and conditions set forth in this Article XIV. The covenants and conditions set forth in this Article XIV MAY also be enforced by Grand County, Colorado.

## RESTRICTIONS AND REQUIREMENTS

Section 15.1 Restrictions and Requirements. Except as otherwise provided herein, the restrictions and requirements set forth in this Article XV SHALL apply to all Lots and Common Areas of the Community.

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### Section 15.2 General Use Restrictions.

- 15.2.1 Lots SHALL be used only for Single Family Residential Use. Building permits will only be issued for a single building improvement to be constructed on the Lot within the Community. The minimum floor area permitted for primary residences constructed upon any Lot SHALL be 1,800 square feet, exclusive of garages, basements, cellar or attic areas, decks, porches, terraces, walkways or roof overhangs. The ADRC MAY allow minor deviation from these requirements upon a finding of special circumstances. The entire building improvement to be constructed on a Lot for which a building permit has been issued must be completed within twelve (12) months from the date of issuance of the building permit.
- 15.2.2 No building SHALL exceed 35 feet in height. The height of a building will be determined from the average height of the roof line to the average grade of the ground under the building. SHOULD the height restriction imposed by Grand County, Colorado (or the formula used for calculating the same) conflict with this height restriction or formula, the more restrictive SHALL apply.
- 15.2.3 No application for rezoning any portions of the Community SHALL be filed with any governmental or quasi-governmental authority, unless the proposed rezoning has been approved by 85 percent of the votes allocated to all Lots and the uses that would be permitted under the rezoning comply with this Declaration and other Association Documents.
- 15.2.4 No Owner SHALL offer or sell any interest in any Lot under a “timesharing” or “interval ownership” plan or similar plan.
- 15.2.5 No Owner SHALL conduct or permit to be conducted a so called “bed and breakfast” or “chalet”.
- 15.2.6 All lighting within the Community, except signage lighting permitted relating to the Community, SHALL use low wattage bulbs or lamps. All such lighting SHALL be directed away from adjoining Lots and public view.
- 15.2.7 No noxious or offensive activity SHALL be carried on upon any Lot.
- 15.2.8 No trailers, tents, shacks or any temporary buildings or structures SHALL ever be permitted on any portions of the Community, except an actual construction trailer or trailers permitted by the Architectural Design and Review Committee in connection with ongoing construction on any Lot. In no event SHALL any such temporary building or structure at any time be used for human habitation, temporarily or permanently.
- 15.2.9 Pets
- (a) No animals or poultry of any kind other than house pets SHALL be kept or maintained on any part of a Lot without the approval of the Association. No animals MAY be raised, bred or kept for any commercial purpose. The number of pets in each household SHALL be maintained at a level where they are under complete control and care by the occupant and are in compliance with local

and state laws and regulations regarding domesticated animals in a single family residence. If any Owner or its Guests violate any of the restrictions or requirements, the Association MAY remove the pet from the Community and fine the Owner for any second violation and each subsequent violation,

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in addition to pursuing any and all other rights and remedies the Association has under this Declaration.

- (b) All pets must be fed within an Owner's home. Dogs and other pets MAY not be fed outside an Owner's home, not even in a kennel or a dog run as this attracts other animals and pests.
  - (c) Animals within the Community must be either kept within an enclosure, on a leash being held by a person capable of controlling the animal, or under command control. Pets SHALL be allowed to accompany Owners and their Guests when under leash or command control; however, Owners SHALL bear full responsibility for their animals at all times.
  - (d) Pets SHALL not be a nuisance from noise, odor or trespass to any other portion of the Property. Any complaint SHALL be brought before the Board of the Association and the Board SHALL have the right to limit the activity of such pets on any Lot or prohibit them from continued habitation on the Lot if further complaints occur.
- 15.2.10 Parking of recreational vehicles, snowmobiles, boats or other watercraft, or other oversized vehicles must be placed in an enclosed garage or other storage structure approved by the Architectural Design and Review Committee and screened from public view. This restriction SHALL not prohibit commercial or construction vehicles in the ordinary course of business from making deliveries or otherwise providing service to the Property, and SHALL not apply to the initial construction by other Owners.
- 15.2.11 No outbuildings SHALL be constructed or erected on any Lot without the prior written approval of the Architectural Design and Review Committee. In making a determination to approve or deny an outbuilding, the ADRC SHALL assess the impacts to neighboring Lots as to size, location and design consistent with the building structure of the dwelling. If allowed, all outbuildings SHALL be constructed of the same or similar exterior siding and roofing materials as the dwelling structure and as approved by the ADRC.
- 15.2.12 No estate, garage or yard sales MAY be conducted within the Community.
- 15.2.13 No Lots SHALL be used for any type or kind of exterior storage of construction equipment or materials, except during construction. Such materials and equipment SHALL be expeditiously removed upon completion of construction.
- 15.2.14 No business or commercial enterprise SHALL be allowed to operate within the boundaries of the Community unless the business or enterprise complies with the following;
- (a) All operations SHALL be conducted entirely within the Owner's dwelling.



- (b) The Home Occupation SHALL be conducted exclusively by the Owner and up to one non-resident employee
- (c) There SHALL be no permanent evidence outside of the dwelling, visible or audible, including signs, that a Home Occupation is being conducted therein; and

- (d) There SHALL be no excess vehicular traffic, deliveries or trash. The determination of what constitutes excess vehicular traffic, deliveries or trash SHALL be made solely by the Board.

15.2.15 No signs, except Lot “for sale” signs, SHALL be erected or maintained on any Lot, except signs required by legal proceedings and such other signs as MAY be approved by the Architectural Design and Review Committee.

15.2.16 No unsightliness SHALL be permitted within the Community. All equipment, above-ground storage, trash containers, satellite dishes and the like on any Lot SHALL be screened so as to conceal them from public view. All rubbish and trash SHALL be regularly removed and SHALL not be allowed to accumulate. In the case of a violation, the Board MAY go on the Lot and remove such rubbish and trash, or cause it to be removed, and charge the Owner all costs involved in such removal. Trash SHALL be stored in “bear-proof” containers as approved by the North American Bear Society or by the Division of Wildlife of the State of Colorado. Individual trash receptacles SHALL be stored inside dwelling units or behind screening and out of public view except on the day of trash pick-up.

Section 15.3 Restricted Activities. The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as MAY be imposed, by the Board:

15.3.1 Capturing, trapping, hunting or killing of wildlife within the Community and the discharge of firearms, except in circumstances posing an imminent threat to the safety of any person in the Community.

15.3.2 Any activity which materially disturbs or destroys the vegetation, wildlife, wetlands or air quality within the Community or which uses excessive amounts of water or which results in unreasonable levels of sound or light.

15.3.3 No Owner SHALL bury any trash, garbage or other waste material within the Community.

15.3.4 No open fires SHALL be allowed to exist, unless contained in a customary barbecue grill, or in a barbecue pit approved by the Architectural Design and Review Committee.

Section 15.4 Compliance with Laws. Nothing SHALL be done or kept in the Community which violates any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

Section 15.5 Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket “risks of direct physical loss” property insurance on such Owner’s Lot and structures thereon providing full replacement cost coverage less a

reasonable deductible.

Section 15.6 Compliance with Insurance. Except as MAY be approved in writing by the Association, nothing SHALL be done or kept in the Community that MAY result in the cancellation of any insurance maintained by the Association or any Owner, or which MAY result in an increase in the rates of the Association insurance.

Section 15.7 Enforcement. The Association MAY enforce the restrictions and requirements set forth in these Declaration of Covenants, Conditions and Restrictions, and any restrictions imposed by the Division of Wildlife for which an Owner is obligated. If an Owner or its Guests violate any of the restrictions or

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requirements set forth in this Section 15.7, the Association MAY fine the Owner, in addition to pursuing any and all other rights and remedies the Association has under this Declaration.

#### ARTICLE XVI EASEMENTS AND RESERVATIONS

Section 16.1 Associations' Easements.

16.1.1 The Association SHALL have a general easement over, across, through and under each Lot To:

- (a) exercise any right held by the Association under this Declaration or any other Association Document; and
- (b) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

16.1.2 Notwithstanding the foregoing, the Association SHALL not enter any Lot without reasonable prior notice to the Owner, except to enter upon any Lot for emergency, security and safety reasons, to perform maintenance upon any Lot if any Owner fails to do the same as provided in this Declaration, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and the Rules and Regulations.

Section 16.2 Sewer Easement. Easements and rights-of-way for a proposed sanitary sewer line and appurtenances are granted in the road right-of-way (as shown on the Plat). The Association SHALL grant easements as mutual needs allow on land owned/controlled by each entity. If a sewer system is implemented, the granting of such easements SHALL include a condition to restore disturbed ground to its original condition after installation.

Section 16.3 Recorded Easements and Licenses. The Community SHALL be subject to all easements and licenses as shown on any recorded plat affecting the Community and to any other easements or licenses of record or of use as of the date of recordation of this Declaration. In addition, the Community is subject to all easements created or permitted by this Declaration, except that all Golf Course Infrastructure Easements shown on the Plat and discussed in the original Declaration have been removed and released by Owner amendment to the Declaration and Plat. The attached Exhibit D provides a general depiction of the Lots with the Golf Course Infrastructure Easements removed.

#### ARTICLE XVII CONDEMNATION

Section 17.1 Condemnation of Common Areas.

- 17.1.1 If any Common Area owned by the Association is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith SHALL be paid to the Association and used by the Association:
- (a) first, to repair any damage to Common Areas resulting from the condemnation or similar taking; and
  - (b) second, for any other Common Expenses.

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## ARTICLE XVIII MORTGAGEE PROTECTIONS

- Section 18.1 Mortgagee Provisions. The following provisions are for the benefit of holders, insurers and guarantors of First Mortgages on Lots in the Community. The provisions of this Article XVIII are applicable to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.
- Section 18.2 Notices of Action. If requested in writing to do so, the Association SHALL give prompt written notice of the following to each First Mortgagee making such request:
- 18.2.1 Any condemnation loss or any casualty loss which affects a material portion of the Common Areas or any Lot in which an interest is held by the First Mortgagee;
  - 18.2.2 Any delinquency in the payment of Assessments or charges owed which remains uncured for sixty (60) days by an Owner whose Lot is encumbered by a First Mortgage, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days.
  - 18.2.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
  - 18.2.4 Any proposed action which would require the consent of First Mortgagees as set forth in this Article XVIII.
  - 18.2.5 Any judgment rendered against the Association.
  - 18.2.6 A current status of a Lot Owner's Assessment.
- Section 18.3 Consent Required. Notwithstanding anything to the contrary contained in this Declaration, the Association MAY not take any of the following actions without the consent of 67 percent of the First Mortgagees based on one vote for each Lot encumbered by a First Mortgage held:
- 18.3.1 By act or omission seek to abandon or terminate the Community, except after condemnation or substantial casualty;
  - 18.3.2 Change the method of determining the obligations, Assessments, dues or other charges which MAY be levied against an Owner of a Lot.
  - 18.3.3 By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Areas (provided, however, the issuance and amendment of Architectural Design and Review

Guidelines, architectural standards, procedures, Rules and Regulations, or use restrictions SHALL not constitute a change, waiver, or abandonment within the meaning of this provision).

18.3.4 Adjoin the Community with any other adjacent Development.

Section 18.4 Notice of Objection. Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty days following the receipt of notice of such proposed amendment or action, the

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First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 18.5 First Mortgagees' Rights.

18.5.1 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 Areas or improvements thereon, and MAY pay overdue premiums on hazard insurance policies, for the Common Areas. First Mortgagees making such payment SHALL be owed immediate reimbursement from the Association.

18.5.2 A First Mortgagee SHALL be entitled to cure any delinquency of the Owner of a Lot encumbered by its First Mortgage in the payment of Assessments. In that event, the First Mortgagee SHALL be entitled to obtain a release from the line imposed or perfected by reason of such delinquency.

Section 18.6 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article XVIII SHALL operate to:

18.6.1 Deny or delegate control over the general administrative affairs of the Association by the Owners or the Executive Board;

18.6.2 Prevent the Association or the Executive Board from commencing, intervening and/or settling any legal proceeding; or

18.6.3 Prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of Article XIX above.

#### ARTICLE XIX ENFORCEMENT AND REMEDIES

Section 19.1 Enforcement.

19.1.1 Each provision of this Declaration with respect to the Association or the Common Areas SHALL be enforceable by any Owner by a proceeding for injunctive relief.

19.1.2 Each provision of this Declaration with respect to an Owner or a Lot SHALL be enforceable by the Association by:

(a) a proceeding for injunctive relief;

(b) a suit or action to recover damages; or

(c) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the right to use any privileges afforded

them due to Lot ownership and from participation in any Association affairs.

19.1.3 In addition to the rights and remedies described in paragraph 19.1.2 above, if any Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or

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observed under this Declaration or any other Association Document, the Association SHALL have the following rights and remedies;

- (a) The Association MAY, but is not obligated to, remedy such failure to comply at the Owner's sole cost and expense. If the Association remedies any such failure to comply, the Owner SHALL pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty days after the Owner receives a written invoice therefore from the Association.
- (b) The Association MAY, after notice and an opportunity to be heard, fine the Owner, as a Default Assessment, an amount determined by the Executive Board in its reasonable discretion for each violation. The Owner SHALL pay any such fine to the Association within thirty days after the Owner receives written invoice therefore from the Association.
- (c) With respect to an Owner's failure to pay an installment of any Assessment, the Association MAY accelerate the due date for the payment of the full amount of the Assessment.
- (d) The Association SHALL have all other rights and remedies available to it under this Declaration, at law or in equity.

19.1.4 All rights and remedies of the Association SHALL be cumulative and the exercise of one right or remedy SHALL not preclude the exercise of any other right or remedy.

Section 19.2 Attorney's Fees. SHOULD any dispute under or with respect to this Declaration or any other Association Document occur, the prevailing party SHALL be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

Section 19.3 Interest. If any Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner SHALL pay to the Association interest on such unpaid amount at the rate of 18 percent per annum from the due date of such unpaid amount until the date paid.

Section 19.4 Right to Notice and Hearing. Whenever this Declaration or another Association Document requires that an action be taken after "notice and hearing," including, without limitation, the imposition of a Default Assessment under Section 8.6 or a fine imposed under paragraph 19.1.3(b), the following procedure SHALL be observed. The party proposing to take the action (e.g. the Executive Board or a committee or Officer of the Association) SHALL give at least three days' prior written notice of the proposed action to all Owners whose interests would be significantly affected by the proposed action as reasonably determined by the proposing party. The notice SHALL be delivered personally, sent by overnight courier or mailed not less than three days

before the proposed action is to be taken. The notice SHALL include a general statement of the proposed action and the date, time and place of the hearing (hearing SHOULD be within the County). At the hearing, the party proposing to take the action, and all affected Owners, MAY give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence SHALL be considered in making the decision but SHALL not bind the decision makers. Any affected Owner SHALL be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing SHALL have the right to appeal to

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the Executive Board from a decision of a proposing party other than the Executive Board by filing a written notice of appeal with the Executive Board within ten days after being notified of the decision. The Executive Board SHALL conduct a hearing within forty-five days thereafter, giving the same notice and observing the same procedures as were required for the original hearing.

Section 19.5 Violations and Hearing Procedures. The Board will not impose a fine, suspend voting, or suspend any rights of an Owner, excepting paragraphs 19.5.5 and 19.5.6 below, for violations of the Rules and Regulations, the provisions of the Declaration, these Bylaws, or the Agreement unless and until the procedure below is followed:

19.5.1 Demand. Written demand to cease and desist from the alleged violation will be served upon the alleged violator specifying:

- (a) The alleged violation;
- (b) The action required to remedy the violation, and
- (c) A time period of not less than 10 days during which the violation MAY be remedied without further sanction, if such violation is a continuing one, or a statement that any additional similar violation MAY result in the imposition of a sanction after notice and hearing.

19.5.2 Notice. At any time within 12 months of such demand, if the violate on continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate will serve the violator with written notice of a hearing to be held by the Board. The notice will contain the following:

- (a) The nature of the alleged violation;
- (b) The time and place of the hearing, which time will be not less than 10 days from the giving of the notice;
- (c) An invitation to attend the hearing and produce any statement, evidence and witness on the alleged violator's behalf; and
- (d) The proposed sanction to be imposed.

19.5.3 Hearing. The hearing will be held pursuant to the notice, affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction under these Bylaws, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such

proof will be deemed adequate if a copy of the notice, together with a statement of the date and the manner of delivery, is entered by the Officer, Director or agent who delivered such notice. The notice requirement will be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction, if any, imposed. Written or oral evidence MAY be presented. The presenting party will provide copies of any written evidence to the other party or parties. The decision of the Board will be final.

- 19.5.4 Appeal. The Board MAY in its discretion appoint a Hearing Committee to hear the matter. In such event, the above procedure will apply except that either party MAY appeal the decision of the Hearing Committee to the Board by written notice to the Hearing Committee, the other party

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and the Board. The Board will consider the minutes of the hearing and report the decisions of the Board within a reasonable period of time not exceeding 60 days after receipt of the notice. The decision of the Board will be final.

- 19.5.5 Nonconformance or Violations Relating to Construction. Notwithstanding anything herein to the contrary, judicial proceedings must be instituted before any nonconforming or violating items of construction can be altered or demolished.

- 19.5.6 Delinquent Assessments. The foregoing procedures will not be necessary in order to impose any sanction or penalty for nonpayment of a Delinquent Assessment.

- Section 19.6 Non-waiver. Failure by the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or in any other Association Document SHALL in no way be deemed to be a waiver of the right to do so thereafter.

## ARTICLE XX TERM AND AMENDMENTS

- Section 20.1 Term.  
The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration SHALL run with and bind the Community until the Declaration is terminated pursuant to Section 20.2 below.

- Section 20.2 Termination.  
Subject to the rights of Mortgagees under Article XVIII above, the Owners MAY terminate the Community and this Declaration, by the vote of 75 percent of the votes allocated to all Lots. If the necessary votes are obtained, the agreement of the Owners to terminate the Community and this Declaration SHALL be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act. Upon recordation of the termination agreement in the Grand County Records, the Community SHALL be terminated, this Declaration SHALL have no further force or effect, and the Association SHALL be dissolved.

- Section 20.3 Amendments.

- 20.3.1 Subject to the right of Mortgagees under Article XVIII above, and except for any conflicting provisions of the Act which MAY require the approval of a greater or lesser number of Owners (in which event the provisions of the Act SHALL control), Owners MAY amend any provision of this Declaration and the Plat at any time by a vote of at least 67 percent of the votes allocated to all Lots, in person or by proxy vote for such amendment, or without a meeting if all Owners have been duly notified and Owners representing at least 67 percent of the votes allocated to all Lots

consent in writing to such amendment. If the necessary votes and consent are obtained, the Association, acting by and through its Officers, SHALL cause to be recorded in Grand County Recorder's Office an amendment to the Declaration, or Plat as the case MAY be, in accordance with the terms and conditions of the Act. Such amendment MAY, but is not required to, include a complete restatement of the Declaration which includes all such amendments then currently made, all amendments previously made, and the remainder of the Declaration, or the Plat that have not been amended. Such Second Restated Declaration, or Plat, SHALL replace and preempt all prior recorded Declarations, or Plat, which it purports to restate or, in the case of Plat, amend.

20.3.2 Notwithstanding the foregoing, the Association MAY amend, without the approval of the Owners, except as required by the Act, this Declaration or Plat, if the Executive Board of the

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Association determines such amendments are necessary or desirable and are minor in nature. Such amendments MAY include, but are not limited to:

- (a) Correcting clerical, typographical, or technical errors;
- (b) Compliance 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;
- (c) Adjusting the boundaries of Lots, tracts, or other parcels of property of the subdivision;
- (d) Establishing, vacating, relocating or expanding areas of buildings, rights of way, easements and other matters shown on the Plat, or in deeds of conveyance or agreements of which the Association is a party or has an interest;
- (e) Correcting survey errors;
- (f) Moving the boundary lines between Lots 13, 14, 15 and 16 and the Open Space of the original Final Plat of the Valley at Winter Park Subdivision, and the road right-of-way adjoining said property in order to satisfy the requirement of the Corps of Engineers, and allowing the vacation of the old road right-of-way no longer needed on account of the moving of the boundary lines and road right-of-way;
- (g) Moving the boundary lines for Lots 1, 2 and 5, and the road right-of-way adjoining said Lots for the purpose of permitting the construction of a cul-de-sac terminating in the vicinity of the intersections of said Lots, and allowing the vacation of the road right-of-way no longer needed on account of the cul-de-sac. However, nothing herein SHALL require the Association to proceed with such amendments unless and until the Owners of said Lots 1, 2 and 5 and no other Lot Owners, request such action of the Association;
- (h) As otherwise provided in this Declaration.

#### ARTICLE XXI MISCELLANEOUS

Section 21.1 Interpretation of the Declaration. Except for judicial construction, the Association, by its Executive Board, SHALL have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof SHALL be



final, conclusive and binding as to all Persons and property benefited or bound by the covenants and the provisions hereof.

Section 21.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable SHALL not affect the validity and enforceability of any other provision hereof.

Section 21.3 Reference to Declaration and Deeds. Deeds to and instruments affecting any Lot or any other part of the Community MAY contain the provisions set forth herein by reference to this Declaration,

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but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein SHALL be binding upon the grantee-owner or other Person claiming through any deed or other instrument and his or her heirs, executors, administrators, successors and assigns.

Section 21.4 Exhibits. All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

Section 21.5 Conflict with Declaration for The Fairways at Pole Creek (Lots 46, 47 and 48). With regard to Lots 46, 47 and 48 only, in the event of a conflict which affects Lots 46, 47 and 48, between the provisions of this Declaration and the provisions of the Declaration of Protective Covenants, Conditions, and Restrictions for The Fairways at Pole Creek, recorded at Reception No. 97011062 on December 11, 1997 in the real estate records of Grand County, Colorado ("The Fairways Declaration"), the provisions of The Fairways Declaration SHALL control.

Lots 46, 47 and 48 which are adjacent to the Pole Creek Golf Course are hereby burdened with non-exclusive easements in favor of the Pole Creek Golf Course, their operators and users, respectively, for the operation, maintenance and repair of the courses and the overspray of fertilizers, herbicides, pesticides and water. Under no circumstances SHALL the Association or the Fraser Valley Metropolitan Recreation District be held liable for any damage or injury resulting from the exercise of this easement.

Section 21.6 Governing Law. This Declaration SHALL be governed by and construed in accordance with the laws of the state of Colorado.

Section 21.7 Notices. All Owners of each Lot SHALL have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Lot SHALL furnish such registered address to the secretary of the Association within ten days after transfer of title to the Lot to such Owner or Owners. Such registration SHALL be in written form and signed by all of the Owners of the Lot or by such Persons as are authorized to represent the interests of all Owners of the Lot. If no address is registered or if all of the Owners cannot agree, then the address of the Lot SHALL be deemed the registered address of the Owner(s), and any notice SHALL be deemed duly given if delivered to the Lot. All notices and demands intended to be served upon the Association SHALL be sent to the following address or such other address for the Association as shown in the records of the Colorado Secretary of State or as the Association MAY designate from time to time by notice to the Owner(s):

The Valley at Winter Park Homeowners Association  
1660 Lincoln Street, Suite 1550  
Denver, CO 80264

**CERTIFICATION**

I, the undersigned, do hereby certify:

1. I am the duly elected and acting President of THE VALLEY AT WINTER PARK HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation.

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2. The foregoing SECOND REINSTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK was duly adopted by the Members of the Association, in accordance with Section 22.03 (a) of the Declaration.

In witness whereof, I have hereunto subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_ 2012

THE VALLEY AT WINTER PARK HOMEOWNERS  
ASSOCIATION, a Colorado nonprofit corporation

\_\_\_\_\_  
President

This SECOND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VALLEY AT WINTER PARK was adopted by the Members of the Association on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, effective the \_\_\_\_\_ day of \_\_\_\_\_ 2012, and is attested to by the Secretary of THE VALLEY AT WINTER PARK HOMEOWNERS ASSOCIATION.

\_\_\_\_\_  
Secretary

EXHIBIT A1

(Attached to and forming a part of the Second Restated Declaration of Covenants, Conditions and Restrictions for  
The Valley at Winter Park)

The Valley at Winter Park Subdivision, as set forth in the Plat (as defined in this Second Restated  
Declaration) thereof recorded in the office of the Clerk and Recorder of Grand County, Colorado.

EXHIBIT A2

(Attached to and forming a part of the  
Second Restated Declaration of Covenants, Conditions and Restrictions  
for The Valley at Winter Park)

DESCRIPTION OF THE COMMUNITY

The Community is comprised of Lots 1-48, the Open Space, Tracts A, B, C and D, including Building Areas 2 and 3, and Sign Areas E, F, G and H of the Valley at Winter Park Subdivision, Grand County, Colorado.

EXHIBIT B

(Attached to and forming a part of the  
Second Restated Declaration of Covenants, Conditions and Restrictions  
for The Valley at Winter Park)

All of the Common Areas (as defined in this Second Restated Declaration) as identified in the Plat (as defined in this Second Restated Declaration) of The Valley at Winter Park Subdivision recorded in the office of the Clerk and Recorder of Grand County, Colorado, which is incorporated herein by this reference.

## EXHIBIT C

(Attached to and forming a part of the  
Second Restated Declaration of Covenants, Conditions and Restrictions  
for The Valley at Winter Park)

## ALLOCATED COMMON AREA INTERESTS

Lot	%
1	2.08334%
2	2.08334%
3	2.08334%
4	2.08334%
5	2.08334%
6	2.08334%
7	2.08334%
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45	2.08334%
46	2.08333%
47	2.08333%
48	2.08333%

EXHIBIT D

(Attached to and forming a part of the  
Second Restated Declaration of Covenants, Conditions and Restrictions  
for The Valley at Winter Park)

GENERAL DEPICTION OF THE LOTS  
WITH  
GOLF COURSE INFRASTRUCTURE EASEMENTS REMOVED



