

**FALL CREEK VILLAGE SUBDIVISION**  
A Colorado Common Interest Community  
Located in Section 13, T43N R11W, and Section 18, T43N R10W, N.M.P.M  
San Miguel County, Colorado

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

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NOTE: Colorado statutes can be accessed online:

[http://www.state.co.us/gov\\_dir/leg\\_dir/OLLS/colorado\\_revised\\_statutes.htm](http://www.state.co.us/gov_dir/leg_dir/OLLS/colorado_revised_statutes.htm)

# FALL CREEK VILLAGE SUBDIVISION

A Colorado Common Interest Community  
Located in Section 13, T43N R11W, and Section 18, T43N R10W, N.M.P.M  
San Miguel County, Colorado

## AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

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**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE FALL CREEK VILLAGE SUBDIVISION**, as amended from time to time, (“Amended Declaration”) is made this 22 day of August, 2023, by the Fall Creek Village Homeowners Association, a Colorado non-profit corporation.

### RECITALS

**WHEREAS**, the Fall Creek Village Subdivision was created by the approval of the San Miguel County Commissioners on September 15, 1980, as recorded in the office of the Clerk and Recorder for San Miguel County in Plat Book 1, Page 258 on September 15, 1980; and

**WHEREAS**, the original Declaration for the Fall Creek Village Subdivision common interest community was made on December 11, 1991 by Declarants Fred Stemmler, Stanley Phillips, Jean Phillips, Kathleen Allen (fka Kathleen B. Kidwell), George Allen, Jon Moore, Nancy Moore, and Gloria Wenzik, as recorded in the office of the Clerk and Recorder of San Miguel County at Rec. #354275, on January 9, 2003; and

**WHEREAS**, the Fall Creek Village Homeowners Association, a Colorado non-profit corporation (“Association”), was established on July 16, 1990, and re-formed on January 9, 2003, for the purpose of managing the affairs of the common interest community, and such non-profit corporation is maintained in good standing with the office of the Secretary of State of Colorado; and

**WHEREAS**, the Association is maintained in good standing with the office of the Secretary of State of Colorado, and current information regarding the principal office of the Association and its registered agent is maintained with the office of the Secretary of State of Colorado; and

**WHEREAS**, the Association was established to provide an entity for the maintenance of roads and enforcement of covenants and operation of the property owners association which is a part of the Fall Creek Village Subdivision development, according to the protective covenants now or hereafter recorded in the public records of San Miguel County, Colorado; and

**WHEREAS**, the Bylaws of the Fall Creek Village Homeowners Association, a Colorado non-profit corporation (“Association”), were executed on February 9, 2001 and recorded in the office of the Clerk and Recorder of San Miguel County on January 9, 2003 at Reception #354277; and

**WHEREAS**, the Property subject to this Amended and Restated Declaration is a Planned Community as defined in C.R.S. §38-33.3-103(22), and is subject to the Colorado Common Interest Community Ownership Act (“CCIOA”), C.R.S. §38-33.3-101 *et seq.*, as it may be amended from time to time; and

**WHEREAS**, in order to address any question of the applicability of CCIOA, the Members have elected under C.R.S. §38-33.3-118 to be treated as if it were created after June 30, 1992 and thereby subject the common interest community to all of the provisions of CCIOA; and

**WHEREAS**, the Declaration was comprehensively amended and updated to comply with the provisions of CCIOA and other applicable law in 2012; and

**WHEREAS**, recent changes in CCIOA since 2012 and other considerations of the Association require another comprehensive amendment of the Declaration in 2023; and

**NOW THEREFORE**, the Board of Directors of the Fall Creek Village Homeowners Association (“Board”), deems it necessary and desirable to adopt this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Fall Creek Village Subdivision (“Amended Declaration”), and subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Amended Declaration.

## **ARTICLE 1 DECLARATION**

**1.01 Declaration.** The Property is subjected to these protective covenants, conditions, and restrictions for the benefit of the Property and present and future Owners thereof. The Declaration is intended to set forth limitations and restrictions with respect to the use, density and design of improvements on the Property in order to preserve the natural beauty of the Property and its setting, to preserve, protect and enhance the values and amenities of the Property, and to maintain the Property as a pleasant and desirable community, and additionally to maintain the Association’s management of the Property in compliance with all applicable laws. [C.R.S. §38-33.3-205]

**1.02 Covenants Running with the Land.** All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of the Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by the Declaration bind and inure to the benefit of the Members, the Association, all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives. The Property and each Parcel within the Fall Creek Village Subdivision shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the covenants, conditions, restrictions, easements, and equitable servitude as contained in the Declaration.

**1.03 Upkeep of the Common Interest Community.** Except to the extent of any valid original Declarant reserved rights, or insurance matters under C.R.S. §38-33.3-313(9), the Association is responsible for maintenance, repair, and replacement of the Common Elements, and each Member is responsible for maintenance, repair, and replacement of the Improvements located on such Member’s Parcel. Each Member shall afford to the Association and the other Members, and to their agents or employees, access through such Member’s Parcel reasonably necessary for those purposes. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements or any Parcel through which access is taken, the Member responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. [C.R.S. §38-33.3-307]

**1.04 Tort and Contract Liability.** Any action alleging an act or omission by the Association other than original Declarant responsibilities must be brought against the Association and not against any Member. A Member is not precluded from maintaining an action against the Association or Declarant by virtue of being a Member or officer of the Association. [C.R.S. §38-33.3-311]

**1.05 Other Applicable Law.** Except as provided in the Act, the covenants, conditions and restrictions contained in the Declaration are in addition to all other applicable laws, land use restrictions, zoning ordinances, rules, and decisions of other governmental and judicial authorities including San Miguel County. The Declaration does not supplant any such laws and land use restrictions, which apply independently and separately from the provisions of the Declaration. [C.R.S. §38-33.3-106; C.R.S. §38-33.3-108; C.R.S. §38-33.3-319; C.R.S. §7-121-101 to C.R.S. §7-137-101 et seq.]

**1.06 Supplemental General Principles of Law.** The principles of law and equity, including, but not limited to, the law of corporations and real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause, supplement the provisions of the Declaration, except to the extent inconsistent with the Act. [C.R.S. §38-33.3-108]

## **ARTICLE 2 DEFINITIONS**

[C.R.S. §38-33.3-103]

**2.01 Defined Terms.** The following terms as used in this Amended Declaration are defined below, and unless specifically provided otherwise or unless the context otherwise requires, the definitions included in C.R.S. §38-33.3-103 shall apply. In the event of a conflict between any term defined below and those in the Act, the Act shall control. [C.R.S. §38-33.3-103]

**“Act”** means the Colorado Common Interest Ownership Act (“CCIOA”), Colorado Revised Statutes §38-33.3-101 through §38-33.3-3 19, as the same may be amended from time to time.

**“Allocated Interest”** means the Common Expense liability and the votes in the Association appurtenant to each Parcel, determined in accordance with the Declaration.

**“Amended Declaration”** means this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Fall Creek Village Subdivision, including by reference all Plats associated with the common interest community, all as may be amended from time to time.

**“Articles”** means the Articles of Incorporation of the Association, as filed in the office of the Secretary of State of Colorado and as the same may be amended from time to time.

**“Assessment”** means a General Assessment, a Special Assessment or a Default Assessment levied and assessed against any Parcel pursuant to the Declaration.

**“Assessment Lien”** means the statutory lien rights of the Association pursuant to C.R.S. §38-33.3-316.

**“Association”** means the Fall Creek Village Homeowners Association, a Colorado non-profit membership corporation, or any successor to the Fall Creek Village Homeowners Association by whatever name that is charged with the duties and obligations set forth in the Declaration, the Articles, the Bylaws, and other Governing Documents.

**“Board”** means the Board of Directors of the Fall Creek Village Homeowners Association, the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Fall Creek Village Subdivision.

**“Building Envelope”** means the area as shown on any Plat or site plan within which all Improvements and structures must be located, except as specifically allowed by the Governing Documents, the DRC or the Board.

**“Building Footprint”** means the vertical extension to the ground of the exterior walls of all enclosed portions or extensions of buildings (including, but not limited to attached garages, enclosed decks, porches, and similar enclosed extensions, attachments and accessory structures) and unenclosed portions or extensions of buildings (including, but not limited to decks, porches, eaves and roof overhangs).

**“Building Height”** means the vertical distance from the average ground level of the Building Footprint to the highest point of the roof ridge.

**“Bylaws”** means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including any amendments to those instruments which have been duly adopted by the Board, as the same may be amended from time to time.

**“Common Elements”** means the General Common Elements and the Limited Common Elements.

**“Common Expenses”** means any and all costs, expenditures made or liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (a) managing, operating, insuring, improving, repairing, replacing and maintaining the Commons Elements; (b) providing facilities, services and other benefits to Members; (c) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (d) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (e) regulating and managing the Fall Creek Village Subdivision; and (f) operating the affairs of the Association; together with all reserve funds for any such costs, expenses and liability.

**“Common Expense Liability”** means the liability for common expenses allocated to each unit pursuant to C.R.S. §38-33.3-207.

**“Common Interest Community”** means, whether or not capitalized, real estate described in the Declaration with respect to which a Person, by virtue of such Person's ownership of a Parcel, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a Declaration.

**“Declarant”** means Fred Stemmler, Stanley Phillips, Jean Phillips, Kathleen Allen (fka Kathleen B. Kidwell), George Allen, Jon Moore, Nancy Moore, and Gloria Wenzik, their successors or assigns, or any Person, Persons, entity or entities to whom the rights of the Declarant under the Declaration were validly transferred by the Declarant prior to the termination of any such rights. The Declarant for the purposes of this Amended Declaration is the Fall Creek Village Homeowners Association.

**“Declaration”** means the original Declaration of Covenants, Conditions and Restrictions as created by the Declarant, including by reference all Plata associated with the common interest community, all as may have been amended from time to time, including this Amended Declaration and any future amendments and supplements. There is only one Declaration for the Fall Creek Village Subdivision: the terms “Declaration” and “Amended Declaration” are used only for the convenience of identifying various documents as may be needed in certain contexts. The term “Declaration” may refer to either the original Declaration or the Amended Declaration.

**“Director”** means a duly elected or appointed member of the Board, whether or not capitalized.

**“Design Review Committee” (“DRC”)** shall mean that committee as established by the Board for the purpose of reviewing all proposed Improvements to any Parcel or improvements to the Common Elements or Limited Common Elements in the Fall Creek Village Subdivision in accordance with the Governing Documents, and carrying out other duties as may be assigned to it by the Board.

**“Design Review Committee Rules”** means any rules adopted by the Association for the purpose of carrying out the duties of the DRC.

**“Design Review Committee Design Review Procedures”** means any standards and procedures applicable to the construction of any Improvements on any Parcel in Fall Creek Village Subdivision.

**“Domestic Sewer System”** means the Domestic Sewer System that serves all Lots except 9 and 10 in the Fall Creek Village Subdivision. Common Expense Liability for the Domestic Sewer System is shared by the Parcels that are connected to the sewer system.

**“Domestic Water System”** means the Domestic Water System that serves all Lots except 9 and 10 in the Fall Creek Village Subdivision. Common Expense Liability for the Domestic Water System is shared by the Parcels that are connected to the water system.

**“Fall Creek Village Subdivision”** means the common interest community created regarding the Property by the Declaration, consisting of the Parcels and the Common Elements of the Fall Creek Village Subdivision common interest community.

**“General Common Elements”** means all of the Fall Creek Village Subdivision, other than the Parcels and the Limited Common Elements. The General Common Elements include, without limitation, (a) road and drainage Improvements, walkways and parking areas located within the roads shown on the Plat; (b) the common Sewage disposal system for the Fall Creek Village Subdivision; (c) the common water system for the Fall Creek Village Subdivision; and (d) in general all apparatus and installations intended for common use, except for those Improvements that are designated by the Act, by the Declaration or by the Plata as Parcels or Limited Common Elements. General Common Elements may additionally include; (a) any parcels of real property and improvements and fixtures located thereon, that (i) are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to the Declaration or a lease, license, easement or other agreement, and (ii) that are used or possessed by the Association for the benefit of all Members.

**“Governing Documents”** means the Declaration, the Articles, the Bylaws, the Rules and Regulations and policies of the Association, and the Act, as the same may be amended from time to time.

**“Guest”** means any family member, employee, agent, independent contractor, licensee, lessee, customer or invitee of an Member.

**“Inactive Membership”** means Lot 10 of the Fall Creek Village Subdivision. As an inactive Member, the Owner of Lot 10 does not have voting rights, are not assessed for the Common Expenses of the Association, and are not allocated a percentage of the Allocated Interests of the Common Elements or Common Expenses of the Association. However, as provided in the Declaration, the use of Lot 10 is otherwise subject to the Governing Documents of the Association.

**“Improvement”** means the exterior aspects of any building, structure or other improvement (including, without limitation, all fixtures and improvements contained therein), either new or existing, and all things constructed upon, above, or below the surface of any Parcel, and exterior aspects of any appurtenances thereto of every type and kind. Improvement shall specifically include any alteration, excavation, or fill of any part of the surface of a Parcel for any purpose. Other than as specifically excepted in the Governing Documents, all Improvements on Parcels require advance approval of the DRC to ensure compliance with the Governing Documents.

**“Limited Common Elements”** means those portions of the Common Elements allocated by the Declaration or as may be established by the Association or by operation of the Act for the exclusive use of one or more Parcels, but fewer than all Parcels.

**“Majority”** regardless of whether capitalized, means any percentage greater than fifty percent (50%).

**“Member”** means an Owner of a Parcel entitled to Membership in the Association by virtue of such ownership. The terms “Member” and “Owner” are synonymous.

**“Membership”** means a Membership in the Association, together with the rights granted to Members and the responsibilities of the Owners as a Member of the Association, pursuant to the Declaration and the Governing Documents.

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

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

**“Officer”** means, whether or not capitalized, a duly elected or appointed officer of the Association.

**“Owner”** means the record holder of legal title to the fee simple interest in any Parcel or portion thereof. If there is more than one record holder of legal title to a Parcel, each record holder shall be a Member. The terms “Member” and “Owner” are synonymous.

**“Parcel”** shall refer to any Lot, Parcel or Unit within the Property described in the Plats or the legal description listed on Exhibit “A” hereto attached and incorporated by reference herein.

“**Person**” means, whether or not capitalized, 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.

“**Plat**” means that part of the Declaration that is a land survey plat as set forth in C.R.S. §38-51-106, depicts all or any portion of the Fall Creek Village Subdivision in two dimensions, is executed by a person that is authorized under CCIOA to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located.

“**Property**” means: (a) the real property located in the San Miguel County, Colorado, that consists of the Fall Creek Village Subdivision and is more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference; and (b) any real property that is later made subject to the Declaration in accordance with the terms and conditions contained herein.

“**Property Management Committee**” (“**PMC**”) shall mean that committee as established by the Board for the purposes of assisting the Board in carrying out certain property management responsibilities. In the absence of a committee established by the Board, the Board shall act as the Property Management Committee.

“**Residential Use**” means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or service to, the public.

“**Rules and Regulations**” means any instruments adopted by the Association for the regulation and management of the Fall Creek Village Subdivision, as the same may be amended from time to time, including any policies adopted by the Association and those policies required by the Act, regardless of the title of any such instrument.

“**Unit**” means a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the declaration. For the purposes of this Declaration, a “Unit” has the same meaning as “Lot” or “Parcel”.

“**Vegetation**” means, whether or not capitalized, trees, shrubs and grasses of all types, whether natural or planted, and whether maintained by a Member or the Association.

“**Xeriscape**” means the combined application of the seven principles of landscape planning and design, soil analysis and improvement, hydro zoning of plants, use of practical turf areas, uses of mulches, irrigation efficiency, and appropriate maintenance under C.R.S. §38-35.7- 107(1)(a)(III)(A).

### **ARTICLE 3 PARCELS, COMMON ELEMENTS AND ALLOCATED INTERESTS**

#### **3.01 Parcels.**

(a) *Creation of Parcels.* The Parcels of the Fall Creek Village Subdivision were created within the Property by the Plat, the boundaries and identifying numbers of which Parcels are shown on the Plat, as amended and supplemented from time to time.

(b) *Alteration of Boundaries.* No Member may alter or relocate the boundaries between its Parcel and an adjacent Parcel, except as provided by the Declaration and the Act. No alteration or relocation of Parcel boundaries shall be effected without the necessary amendments to the Declaration and Plats, executed and recorded pursuant to the requirements of C.R.S. §38-33.3-217(1) through (6).

(c) *Appurtenant Interests.* Except as expressly provided to the contrary in the Declaration, the Allocated Interest of each Parcel, the right to use Common Elements and Limited Common Elements and the Membership in the Association appurtenant to the Ownership of a Parcel may not be partitioned or separated from the Parcel or any part thereof.

(d) *Member Rights Regarding Guests.* Notwithstanding anything to the contrary in the Declaration, a Member may grant its rights to reasonably use any General Common Element or any Limited Common Element appurtenant to the Member’s Parcel to the Member’s Guests in accordance with the Governing Documents.

(e) *Subdivision.* No Parcel in the Fall Creek Village Subdivision may be subdivided into two or more Parcels.

[C.R.S. §38-33.3-213; C.R.S. §38-33.3-217]

**3.02 Allocated Interests.** Each Parcel within Fall Creek Village Subdivision is allocated one-ninth (1/8th) or 12.5% of the Allocated Interests as defined herein, to include one-ninth (1/8) or 12.5% of the Common Expense liability, one-eighth (1/8) or 12.5% undivided interest in the General Common Elements including the Fall Creek Village Sewage Treatment System and Water system, and one vote per parcel in Association matters, and an interest in the Common Expense Liability equal to a percentage of each Parcel as it relates to the total number of parcels expressed as a fraction or a percentage. Except as expressly provided to the contrary elsewhere in the Declaration, an Allocated Interest may not be partitioned from the Parcel to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Allocated Interest made without the Parcel to which the Allocated Interest is appurtenant shall be void. Although



Lot 9 is in the Fall Creek Village Subdivision and is improved, the access and utilities are different from the remainder of the subdivision. The use of Lot 9 is subject to the Governing Documents of the Association, however it is not subject to the general assessments of the Association.

(a) *Water and Sewage System Expenses.* Common Expenses associated with the operation and management of the Water and Sewage System are divided only amongst the Parcels that are improved with residences, and use the Water and Sewage Systems. The Common Expenses associated with the operation and management of the Water and Sewage System are assessed to parcels with residences that are connected to the Water and Sewage Systems, regardless of whether the residence is occupied or not. Lot 9 is not connected to the Water and Sewage Systems.

(b) *Formula.* The formulas used to establish allocations of interests is per Parcel. There are 10 parcels in the Fall Creek Village Subdivision, however one of the parcels is considered unbuildable at this time, and the Memberships appurtenant to that Parcel is inactive. At any time in the future that Lot 10 is rendered to be buildable, the Governing Documents will be amended to recognize the active Membership status of the Lot and Member. The acreage of the Parcels may differ, which does not alter the percentage formula for Common Expense Liability or the voting rights of any Member in any way.

(c) *Void Conveyances.* Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements not allowed for in C.R.S. §38-33.3-312 that is made without the Parcel to which that interest is allocated is void.

[C.R.S. §38-33.3-207; C.R.S. §38-33.3-312]

**3.03 Separate Taxation of Parcels.** Pursuant to the Act, each Parcel, together with its interest in the Common Elements, constitutes a separate parcel of real estate and will be separately assessed and taxed by the County Assessor. The valuation of the Common Elements shall be assessed proportionately to each Parcel in accordance with the Parcel's allocated Common Expense liability, and the Common Elements shall not be separately taxed or assessed.

[C.R.S. §38-33.3-105]

**3.04 Plats.** A Plat is a required part of the Declaration and must be clear and legible, and contain a certification made by a registered land surveyor that all information required by the Act is contained in the Plat or Declaration. Each Plat shall meet the requirements of a land survey plat as set forth in C.R.S. §38-51-106, and each Plat shall include the requirements listed in C.R.S. §38-33.3-209, except to the extent such information is contained in the Declaration. The statutory requirements of any Plat relating to the Fall Creek Village Subdivision shall not be deemed to satisfy any local government laws or requirements, the approval of which must be separately obtained.

[C.R.S. §38-33.3-209; C.R.S. §38-51-106]

**3.05 Description of Parcels.** Any instrument that conveys, encumbers or otherwise affects legal title to a Parcel must describe the Parcel in accordance with C.R.S. §38-33.3-204. [C.R.S. §38-33.3-204]

**3.06 Relocation of Boundaries Between Adjoining Parcels.** Subject to other applicable provisions of law and pursuant to the procedures described in C.R.S. §38-33.3-217, the boundaries between adjoining Parcels may be relocated by an amendment to the Declaration upon application to the Association by the Owners of those Parcels and approval by the Board. [C.R.S. §38-33.3-212; C.R.S. §38-33.3-217]

**3.07 Limited Common Elements.** Except as expressly provided to the contrary in the Declaration, the allocation of any Limited Common Elements may not be altered without the consent of all Owners whose Parcels would be affected by such reallocation, and then only in accordance with the terms and conditions of the Act and the Declaration. Subject to the provisions of the Declaration, every Member shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to the Member's Parcel.

[C.R.S. §38-33.3-202; C.R.S. §38-33.3-205; C.R.S. §38-33.3-208; C.R.S. §38-33.3-217]

**3.08 Conveyance or Encumbrance of Common Elements.** Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least sixty-seven percent (67%) of the votes of the Association agree to that action; except that all Owners of Parcels to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Proceeds of the valid sale of any Common Element are an asset of the Association.

(a) *Agreement.* An agreement to convey, or subject to a security interest, Common Elements must be evidenced by the execution of an agreement, in the same manner as a deed, by the Association. The agreement must specify a date after which the agreement will be void unless approved by the requisite percentage of Members. Any grant, conveyance, or deed executed by the Association must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(b) *Acts of Association.* The Association, on behalf of the Members , may contract to convey an interest in the common interest community pursuant to the Act. Any such contract is not enforceable against the Association until approved, executed and ratified pursuant to the Act. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(c) *Members Rights.* A conveyance or encumbrance of Common Elements pursuant to the Act and the Declaration shall not deprive any Member of its rights of ingress and egress of the Parcel.

(d) *Preexisting Encumbrances.* Notwithstanding anything to the contrary, a valid conveyance or encumbrance of Common Elements does not affect the priority or validity of preexisting encumbrances.

[C.R.S. §38-33.3-207; C.R.S. §38-33.3-312]

**3.09 Domestic Water System.** The Association maintains the Domestic Water System that supplies water to the Parcels in the Subdivision, except for Lots 9 and 10. Advance written consent from the Association shall be obtained prior to any connection or tap, or disturbance of any component of the Domestic Water System. All water lines, including mains and service lines, shall be underground.

**3.10 Domestic Sewer System.** The Association maintains the Domestic Sewer System that supplies sewer services to the Parcels in the Subdivision, except for Lots 9 and 10. Advance written consent from the Association shall be obtained prior to any connection or tap, or disturbance of any component of the Domestic Sewer System. All sewer system lines, including mains and service lines, shall be underground.

#### ARTICLE 4

##### EASEMENTS AND RESERVATIONS

[C.R.S. §38-33.3-205; C.R.S. §38-33.3-216; C.R.S. §38-33.3-312]

**4.01 Recorded Easements and Licenses.** The Property shall be subject to all valid easements and licenses granted by Declarant, all easements and licenses as shown on any recorded Plats affecting the Property and any other valid easements or licenses of record as of the date of recordation of the Declaration. In addition, the Property is subject to all easements created or permitted by the Declaration. [C.R.S. §38-33.3-205]

(a) *Limitation on Obstruction on Easements included in the Declaration.* No gates, fences or obstructions or any structure, material, equipment or refuse will be placed on any easement or Common Element within the Fall Creek Village Subdivision, including:

(i) access and utility easements as shown on the Plats (where public utility services may also be present);

(ii) Subdivision entrance features and signage; and

(iii) other easements identified on the Plats.

(b) *Limitation on Parking.* Overnight parking is not allowed on any common Association Roads within the Fall Creek Village Subdivision.

**4.02 Reservation of Right.** The Association hereby reserves for itself, its successors and assigns, the right to establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Elements; and create other reservations, exceptions and exclusions in the best interests of the Association.

##### **4.03 Utility Easements.**

(a) *General Utility Easement.* Subject to the terms and conditions of the Declaration and the Governing Documents, there is a general easement over, across, through and under the Common Elements or any portion of a Parcel designated for such use, including water and sewer system easements, for ingress to, egress from, and installation, replacement, repair and maintenance of all utility and service lines and systems that service the Property and the Parcels. The Association may but is not obligated to authorize the release of portions of the general utility easement upon the request of any Member showing good cause therefor.

(b) *Use by Public Utility Companies.* Pursuant to the general utility easement, a public utility or service company may, with the Association's prior approval, install and maintain facilities and equipment on the Property to provide service to the Parcels or the Common Elements. Any public utility or service company using the general utility easement shall use its best efforts to install, repair, replace and maintain its lines, facilities and systems without disturbing the uses of Members, the Association, any areas of the Property other than Association Roads, platted Easements and Parcel driveways, and the facilities of other public utility and service companies. Public utility companies shall restore any disturbed areas to the the previous condition.

(c) *Specific Easement for Utility Company.* If any utility or service company furnishing utilities or services to the Property requests a specific easement by separate recordable document, the Association shall have the

right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property, subject to the additional approval of any Member necessitated by any such specific easement and adequate assurances regarding the restoration of any disturbed areas.

(d) *Specific Utility Easements Shown on Plats.* Certain areas of the Property are shown on the Plats as Utility Easements, which may be used in the same manner as the general utility easement.

(i) *Member Responsibility.* The Members shall contact the various utility companies and at their own expense, arrange for the connection of utilities from the primary distribution lines to their homesite or associated outbuildings. Members may install utility service lines for service to their Parcel subject to approval by the Association and the requirements of the utility service provider.

(ii) *Underground Utilities Required.* All new utilities within the Association Roads, platted easements, and along Parcel lines as well as across any Parcel shall be underground.

**4.04 Home Site Utility Connections.** The rights and duties of the Members of the Parcels within the Property with respect to utilities shall be governed by the following:

(a) *Located on Other Parcels.* Whenever home site utility connections, if any, are installed within the Property, which connections or any portions thereof lie in or upon Parcels owned by Owners other than the Owner of the Parcel served by such connections, Members shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Parcels or to have their agent enter upon the Parcels within the Property in or upon which the connections or any portion thereof lie, to install, repair, replace, and generally maintain said connections as and when the same may be necessary, subject to the approval of the Association regarding the Improvement and any applicable Rules and Regulations.

(b) *Serving Multiple Parcels.* Whenever home site utility connections, if any, are installed within the Property that serve more than one Parcel, the /hr of each Parcel served by such connections shall be entitled to full use and enjoyment of such portions of the utility connections as necessary to service his/her/its/their Parcel. Any such connection serving more than one Parcel shall be jointly maintained by the utility provider and/or each Member using such connection.

**4.05 Association's General Easement.** The Association shall have a general easement over, across, through and under each Parcel and all Common Elements. The Association shall not enter any Parcel without reasonable prior notice to the Owner thereof, except in cases of emergency. Under the general easement, the Association has the rights to:

(a) exercise any right held by the Association under the Declaration or any Governing Document; and  
(b) perform any obligation imposed upon the Association by the Declaration or any Governing Documents, including inspection of Parcels regarding compliance of uses thereon with the Governing Documents, pest and weed control and fire hazard management.

**4.06 Easements for Encroachments.** To the extent that any Parcel, Improvement, or Common Element encroaches on any other Parcel, Improvement, or Common Element, an easement shall exist for that encroachment, but such easement shall not relieve a Member of liability in the case of willful misconduct, or relieve any other person of liability for failure to adhere to the Plats and Governing Documents. [C.R.S. §38-33.3-214]

**4.07 Emergency Access Easement.** The Association hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar agencies or persons to enter upon the Property in the proper performance of their duties.

**4.08 Member Easements.** Every Member and its Guests shall have a perpetual right and easement of access over, across, and upon the Association roads, not including private driveways, for the purpose of entering and exiting such Member's respective Parcel. The Association shall take no action which unreasonably restricts any Member or its Guests the right and easement of access over, across and upon the Common Elements, including the Association roads, to its Parcel. The Member easement rights shall be appurtenant to and pass with the transfer of title to such Parcel; provided, however, that such right and easement shall be subject to the following:

(a) the covenants, conditions, restrictions, Governing Documents, easements, reservations, rights-of-ways, and other provisions contained in the Declaration and the Plats; and

(b) the right of the Association to adopt from time to time and enforce any and all Rules and Regulations concerning the Fall Creek Village Subdivision as the Association may determine are necessary or prudent, subject to the terms of the Declaration and the Act.

[C.R.S. §38-33.3-216; C.R.S. §38-33.3-302; C.R.S. §38-33.3-312]

**4.09 Driveway and Road Easements.** Whenever a private driveway is installed within the Property which by necessity in whole or in part lies upon more than one Parcel, or Parcels owned by Members other than the Owners of the Parcel served, or is installed to serve more than one Parcel, the Owners of the Parcels served or to be served by such driveways shall agree on the location of the Driveway. Members agreeing on a joint driveway shall be entitled to full use and enjoyment thereof as required to service its Parcel or to repair, replace or maintain the same, and are hereby granted an easement to the full extent necessary therefore, subject to the approval of the Association regarding the Improvement, appropriate sharing of responsibilities of costs and maintenance between the benefitted and affected Members, and any applicable Rules and Regulations.

**4.10 Watercourse Easement.** There is reserved for the benefit of the Association an easement for all watercourses, other bodies of water, irrigation ditches, and drainage ways; and any related pipes, pumps, and other equipment, over, across, and under all Parcels and Common Elements to the extent reasonably required to protect the Association's water rights, to prevent erosion and other damage to the Property and Common Elements, and to maintain and service the watercourses, drainage, and irrigation systems as existing or installed or maintained by the Association on the Property or pursuant to plans and specifications approved by the Board and the Design Review Committee.

**4.11 No Construction Within Easements.** No Improvement shall be made or constructed within any easement without the prior written approval of the Board and Design Review Committee.

**4.12 Disputes as to Sharing in Costs.** In the event of a dispute between Members with respect to the construction or repair of common or shared utility connections, driveways or drainage or waterway features, or with respect to the sharing of the maintenance costs and expenses thereof, upon the written request of one of such Members addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute. The Board may make a Special Assessment regarding the sharing of costs if appropriate against any or all of the Members involved, which Special Assessment shall be collected and enforced in the manner provided by the Declaration.

## ARTICLE 5

### THE ASSOCIATION

[C.R.S. §38-33.3-301 to C.R.S. §38-33.3-319]

**5.01 The Association.** The Fall Creek Village Homeowners Association, a Colorado non-profit corporation ("Association"), was established on July 16, 1990, for the purpose of managing the affairs of the Fall Creek Village Subdivision, and such non-profit corporation was re-formed on January 11, 2001 and is maintained in good standing at the office of the Secretary of State of Colorado. The Membership of the Association at all times shall consist exclusively of all Members. The Association is charged with the duties and vested with the powers prescribed by law and set forth in its Articles, Bylaws, the Declaration, and the Act. [§38-33.3-301]

**5.02 Association as Trustee.** With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee. [C.R.S. §38-33.3-318]

**5.03 Association Governing Documents.**

(a) *Governing Documents.* The Declaration and Plats created the Fall Creek Village Subdivision common interest community and set forth certain covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens applicable to the Property and Parcels. The Articles filed with the Colorado Secretary of State created the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations and Policies provide for the regulation and management of the Fall Creek Village Subdivision common interest community. These documents, together with the Act and other applicable law, constitute the Governing Documents of the Association and the Fall Creek Village Subdivision.

(b) *Conflicts.* If there is any conflict or inconsistency between the terms and conditions of the Declaration and the terms and conditions of the Act, the Act shall control. If there is any conflict or inconsistency between the terms and conditions of the Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of the 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 of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

**5.04 Bylaws.** In addition to complying with applicable sections of the "Colorado Revised Nonprofit Corporation Act," articles 121 to 137 of title 7, C.R.S. (C.R.S. §7-121-101, *et seq.*), the Bylaws of the Association must provide the information required in C.R.S. §38-33.3-306. [C.R.S. §38-33.3-306]

**5.05 Powers of the Association.** To the extent not inconsistent with the Act, the Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Colorado to regulate and manage the Fall Creek Village Subdivision common interest community, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Act, the Articles, the Bylaws, the Declaration and other applicable law. The Association shall have the powers set forth under the Act in C.R.S. §38-33.3-302, as it may be amended. The Association shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under the Act, the Declaration, the Articles, and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the Association, the common interest community, the Common Elements and the performance of the other responsibilities herein assigned. Except as expressly provided by the Act, provisions of the Act may not be varied by agreement, and rights conferred by the Act may not be waived.

The Association has the following powers:

(a) *Association Rules and Regulations.* The power to adopt, amend and repeal by majority vote of the Board such Rules and Regulations as the Association deems reasonable, including policies required by the Act and otherwise adopted by the Board. The Association Rules and Regulations shall govern the use of Common Elements by Members and Guests, provided, however, that the Association Rules and Regulations may not discriminate among Members and shall not be inconsistent with the Act or the Governing Documents. A copy of the Association Governing Documents as they may from time to time be adopted, amended, or repealed, shall be mailed, posted on the Association's website, or otherwise delivered to each Member. Upon such mailing, posting or other delivery, the Association Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of the Declaration.

(b) *Budgets.* The power to adopt and amend budgets for revenues, expenditures, and reserves of the Association.

(c) *Management.* The power to hire and terminate managing agents and other employees, agents, and independent contractors, and to retain and pay for legal and accounting services for the operation of the Association, enforcement of the Governing Documents, or performance of any other duties or rights of the Association. The authority to delegate its powers and duties to committees, officers, employees, or to any person, firm or corporation to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by any third party of any such duty or power so delegated. Any managing agent, employee, independent contractor, or other person acting on behalf of the association shall be subject to the Act and Governing Documents to the same extent as the Association itself would be.

(d) *Legal Proceedings.* The power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or Members on matters affecting the common interest community.

(i) *Construction Defect Actions.* The Association shall comply with C.R.S. §38-33.3-303.5 regarding construction defect actions.

(e) *Contracts and Liabilities.* The power to make contracts and incur liabilities, and to borrow monies and grant security interests in the Common Elements and in the assets of the Association as collateral therefor.

(f) *Operation and Maintenance of Common Elements.* The power to regulate the use, maintenance, repair, replacement, and modification of Common Elements and cause additional improvements to be made as a part of the Common Elements consistent with the Declaration and the Governing Documents as the Association deems necessary or appropriate. The Association shall also take such actions and arrange for such maintenance as may be necessary or desirable for the upkeep of watercourses, Association Roads, and all other easements. These powers shall include the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired (by easement or otherwise) by the Association. Xeriscape landscaping is encouraged in Common areas that are landscaped. The Board, on behalf of the Association, may contract for the operation, management, and maintenance of Common Elements.

(i) In regulating the Members' use of Common Elements, the Association shall comply with C.R.S. §38 33.3 302.5 and Policy #10 - Use of Common Elements, including during the maintenance, repair, replacement, or modification of a Common Element.

(g) *Property.* The power to acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, however, Common Elements may be conveyed or subjected to a security interest only pursuant to C.R.S. §38-33.3-312.

(h) *Easements.* The power to grant easements, leases, licenses, and concessions through or over the Common Elements. The power to grant and convey to any third party such licenses, easements, and rights-of-way in, on or under any non-exclusive Common Elements as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of the health, safety, convenience and welfare of the Members, for the purposes of constructing, erecting, operating or maintaining underground lines, cables, wires, conduits or other devices for the transmission of utilities; and any similar public or quasi-public improvements or facilities.

(i) *Fees.* The power to impose and receive any payments, fines, fees, or charges for the use, rental, or operation of the Common Elements, subject to the Association's written policy governing the imposition of fines.

(j) *Assessments.* The power to levy, collect and enforce the Assessments, charges and liens imposed, to impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association.

(k) *Preparation and Recordation of Documents.* The power to impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

(l) *Indemnification.* The power to provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance.

(m) *Assignment.* The power to assign its right to future income, including the right to receive Common Expense Assessments.

(n) *Facilities and Services.* The power to provide certain facilities, services and other benefits to the Members.

(o) *Emergency Powers.* The Association or any person authorized by the Association may enter upon any Parcel in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Members as practicable and any damage caused thereby shall be repaired by the Association.

(p) *Other Powers.* The power to exercise any other powers conferred by the Declaration or Bylaws, and to exercise all other powers that may be exercised under the Act, the Governing Documents and by Colorado non-profit corporations. The power to exercise any other powers necessary and proper to fulfill the purposes of the Association and Governing Documents and for the governance and operation of the Association to protect the interests and general welfare of the Members.

[C.R.S. §38-33.3-102; C.R.S. §38-33.3-104; C.R.S. §38-33.3-110; C.R.S. §38-33.3-302; C.R.S. §38-33.3-303; C.R.S. §38-33.3-312]

**5.06 Duties and Obligations of the Association.** In addition to powers delegated to it by the Governing Documents, the Association or its Board shall have the duty of care required of fiduciaries of the Members, duty of undivided loyalty to the Association and its Members, and the duty to act within the scope of authority regarding the conduct of all business affairs of the Association. The Association has the obligation to perform each of the following obligations:

(a) *Registration of Association.* The Association shall register annually with the Colorado Division of Real Estate ("DORA"), in the form and manner specified by the DORA.

(ii) *Annual Registration.* Except as otherwise provided in subsection (b) below, Association shall submit its annual registration a fee as set by DORA and the registration shall include the following information, updated within ninety days after any change:

- (1) The name of the Association, as shown in the Colorado secretary of state's records;
- (2) The name of the Association's management company, managing agent, or designated agent, which may be the Association's registered agent, as shown in the Colorado secretary of state's records, or any other agent that the executive board has designated for purposes of registration under this section;
- (3) The physical address of the Association;
- (4) A valid address; email address, if any; website, if any; and telephone number for the Association or its management company, managing agent, or designated agent; and
- (5) The number of units in the Association.

(ii) *Exemption.* An Association is exempt from the fee, but not the registration requirement, if the Association has annual revenues of five thousand dollars or less or is not authorized to make assessments and does not have revenue.

(iii) **Annual Renewal.** The DORA registration is valid for one year. If the Association that fails to register, or whose annual registration has expired, its rights to impose or enforce a lien for assessments under C.R.S. §38-33.3-316 or to pursue an action or employ an enforcement mechanism otherwise available to it under C.R.S. §38-33.3-123 is suspended until the Association is validly registered pursuant to this section. A lien for assessments previously recorded during a period in which the Association was validly registered or before registration was required pursuant to this section is not extinguished by a lapse in the Association's registration, but a pending enforcement proceeding related to the lien is suspended, and an applicable time limit is tolled, until the Association is validly registered. The Association's registration in compliance with C.R.S. §38-33.3-401 revives a previously suspended right without penalty to the Association.

(iv) **Validity.** The Association's registration is valid upon DORA's acceptance of the information required by C.R.S. §38-33.3-401 and the payment of applicable fees.

(1) The Association's registration number, and an electronic or paper confirmation issued by the division of real estate, are prima facie evidence of valid registration.

(b) **Promote Responsible Governance.** To promote responsible governance the Association shall maintain accurate and complete accounting records, adopt policies, procedures, and Rules and Regulations as required by the Act, provide for Board and Member education, make timely annual disclosures as required by the Act, conduct a reserve study as appropriate, create and adopt a budget on an annual basis, conduct audits as needed or required, and provide for appropriate inspection and copying of Association records, and adopt other Policies as needed to comply with CCIOA and responsibly govern the Association. C.R.S. §38-33.3-209.4, C.R.S. §38-33.3-209.5.

(c) **Enforcement of Governing Documents.** The Association shall perform such other acts, whether or not expressly authorized by the Declaration, as may be reasonably necessary to enforce any of the provisions of the Declaration and the Governing Documents, including the enforcement of the covenants, conditions and restrictions contained therein.

(d) **Design Review.** The Association shall provide design standards adequate to function as a legally supportable basis for making decisions regarding Improvements to Parcels consistent with the Declaration, and shall establish a Design Review Committee to carry out its assigned duties.

(i) **Architectural and Landscaping Changes.** Decisions concerning the approval or denial of a Member's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the declaration or in duly adopted rules and regulations or bylaws of the Association, and shall not be made arbitrarily or capriciously. [C.R.S. §38-33.3-302(3)(b)].

(e) **Access and Road Maintenance.** The Association shall establish and maintain adequate access to the Fall Creek Village Subdivision through other properties and maintain on a year-round basis all roads, bridges, and trail systems which are part of the Common Elements. The Association shall keep all such Improvements in good order and repair and in a neat and usable condition; and shall participate in any joint maintenance arrangement necessary to maintain any other access roads to the Property. The Association through its Board may establish a standing Property Management Committee to serve at its pleasure and assist the Board in carrying out these and any other assigned duties.

(f) **Operation and Management of Water System and Sewage Disposal System.** The Association shall construct, operate and manage the water system and sewage treatment system to service the Fall Creek Village Subdivision, in accordance with all applicable law. The expenses for such management and operation shall be assessed to the Parcels with residences, regardless of whether the residence is occupied.

(g) **Protection of Natural Resources.** The Fall Creek Village Subdivision contains many unique natural resources including streams, meadows, forests, and wildlife populations. The Property is designed and developed to provide a limited number of single-family ranch home sites within the Property, and is intended to be managed to preserve and enhance these natural resources for the present and future benefit of all Members. The Association shall act to protect the natural resources within the Fall Creek Village Subdivision.

[C.R.S. §38-33.3-113; C.R.S. §38-33.3-209.4 to C.R.S. §38-33.3-209.7; C.R.S. §38-33.3-303; C.R.S. §38-33.3-316 C.R.S. §38-33.3-317]

## **5.07 Membership**

(a) **Qualifications.** There shall be one Membership appurtenant to each Parcel in the Fall Creek Village Subdivision. The Membership appurtenant to a Parcel shall be held by the Members of that Parcel and may not be separated from the Parcel to which it is appurtenant. Each Member by virtue of being such a Member and for so long as it is a Member, shall be deemed a Member of the Association. There shall be one vote per parcel as addressed in this Declaration.

(b) **Transfer of Membership.** The Association Membership of each Member shall not be transferred, pledged, or alienated in any way except upon the transfer of legal and equitable title to said Parcel, and then only to the transferee of such title. Any transfer or encumbrance of a Membership other than as permitted herein shall be void and

have no force or effect. Any valid transfer of legal and equitable title to said Parcel shall operate automatically to transfer said Membership to the new Owner thereof.

**5.08 Meetings of Members.** Meetings of Members shall be held in accordance with the applicable provisions of the Bylaws. The Members shall hold at least one meeting annually.

(a) *Powers and Duties of the Members.* A vote of the Members, in accordance with the Governing Documents, is required to:

(i) Elect or remove the Directors of the Association;

(ii) Amend the Declaration in accordance with Section 12.03 of this Amended Declaration, which requires the affirmative vote or agreement of Members to which sixty-seven percent (67%) of the votes in the Association are allocated, and compliance with other provisions of Section 12.03;

(iii) Terminate the Association, the Declaration or the Fall Creek Village Subdivision common interest community in accordance with Section 12.02 of this Amended Declaration, which requires the affirmative vote or agreement of Members to which sixty-seven percent (67%) of the votes in the Association are allocated, and compliance with other provisions of Section 12.03 and the Act;

(iv) Determine the qualifications, powers and duties, or terms of office, of Directors, as included in Sections 3.01, 3.02, and 3.03 and Article 8 of the Bylaws of the Association, which shall further require the approval of fifty-one percent (51%) of the Members of the Association at a regular meeting or a special meeting of the members called for that purpose; or

(b) *Removal of Directors.* The Members by a sixty-seven percent (67%) vote of all Members present and entitled to vote at any meeting of Members at which a quorum is present, may remove any Director, with or without cause.

[C.R.S. §38-33.3-303; C.R.S. §38-33.3-308; C.R.S. §38-33.3- 309; POLICY # 1 - Conduct of Meetings]

**5.09 Voting.** The Association shall have a single class of voting membership, with each Parcel subject to general assessments having a single Membership which shall be entitled to one (1) vote for all purposes. Voting shall be conducted in accordance with the applicable provisions of the Bylaws and the Act. A Member who is delinquent in any sums owed to the Association is automatically suspended from having voting rights. A Member who has entered into a Repayment Plan with the Association shall have voting rights as long as the Member is not delinquent in making payments according to the repayment plan. If a member is delinquent in complying with the terms of the repayment plan, their voting rights are automatically suspended. [C.R.S. §38-33.3-207; C.R.S. §38-33.3-309; C.R.S. §38-33.3-310]

**5.10 Board of Directors and Officers.**

(a) *Management of the Association.* The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws, as each may be amended from time to time. The Board shall be elected by the Members in accordance with the provisions set forth in the Bylaws. Except as otherwise provided in the Act or Governing Documents, the Board may act in all instances on behalf of the Association. Each Board member shall exercise ordinary and reasonable care in carrying out his/her duties as Directors, and shall act in good faith and owe the duty of undivided loyalty and honesty to Association and its Members. Each Board member shall avoid actions of self-interest, self-dealing, or conflicting interests. The Board shall operate in accordance with applicable provisions of the Bylaws and Association Policies.

(b) *Directors.* The Board shall consist of three (3) Directors who shall be elected in accordance with the Bylaws. The number of Directors may be increased in accordance with the provisions of the Articles and Bylaws. The Directors shall hold office until the election or appointment of their successors, or as otherwise directed in the Bylaws. The Board may fill vacancies in its membership for the unexpired portion of any term.

(i) *Qualifications of Directors.* The Directors of the Association shall be individuals who are Members in Fall Creek Village Homeowners Association and in good standing with the Association. If a Parcel is owned by an entity, an individual who has an ownership interest in the entity shall be qualified to be a Director.

(c) *Personal Liability.* No member of the Board, or any committee of the Association, or any officer of the Association shall be liable for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, or any other representative or employee of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her/it/them, acted in good faith and without wanton or willful acts or omissions.

(d) *Limitation on Powers of the Board.* Except as otherwise provided in the Declaration, the Articles and the Bylaws, the Board may act on behalf of the Association in all instances, provided that the Board may not act on behalf of the Association to [C.R.S. §38-33.3-303(3)(a), and Bylaws Sections 3.01, 3.02 and 3.03]:

(i) elect the Directors of the Association;



- (ii) amend the Declaration;
- (iii) terminate the Association, the Declaration or the Fall Creek Village Subdivision common interest community;
- (iv) determine the qualifications, powers and duties, or terms of office, of Directors; or
- (e) *Removal of Directors and Committee Members.* The Members, by a sixty-seven percent (67%) vote of all Members represented and entitled to vote at any meeting at which a quorum is present, may remove any Director or committee member, with or without cause.
- (f) *Investment of Reserve Funds.* With regard to the investment of reserve funds of the Association, the officers and members of the Board shall be subject to the standards set forth in C.R.S. §7-128-401, in accordance with C.R.S. §38-33.3-209.5.
- (g) *Conflicts of Interest.* The Board and any committee thereof shall comply with the Association's Conflict of Interest Policy. [POLICY #3]  
[C.R.S. §38-33.3-303; C.R.S. §38-7-121 to 137; POLICY #1 - Conduct of Meetings, POLICY #3 - Conflict of Interest; POLICY #7 - Investment of Reserve Funds]

**5.11 Contracts.**

- (a) *Good Faith.* Every contract or duty of the Association imposes an obligation of good faith in its performance or enforcement.
- (b) *Unconscionable Agreement or Term of Contract.* The court, upon finding as a matter of law that a contract or contract clause relating to the Association was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result. Whenever it is claimed, or appears to the court, that a contract or any contract clause relating to the Association is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence in accordance with C.R.S. §38-33.3-112.
- (c) *Liability.* Neither the Association nor the members of its Board shall be liable for any act, omission or improper exercise by any third party of any properly delegated duty or power.
- (d) *Management Contract.* The Association's contract with a managing agent shall be terminable for cause without penalty to the Association. Any such contract shall be subject to renegotiation. Any managing agent, employee, independent contractor, or other person acting on behalf of the Association shall be subject to the Act and Governing Documents to the same extent as the Association itself would be.  
[C.R.S. §38-33.3-112; C.R.S. §38-33.3-113; §38-33.3-302]

**5.12 Insurance.** The Association shall at all times maintain insurance policies and coverage in compliance with the provisions of C.R.S. §38-33.3-313 and to the extent feasible in compliance with Fannie Mae and FHA guidelines regarding hazard, flood, and liability insurance.

- (a) *Member's Rights.* A Member may file a claim against the policy of the Association to the same extent, and with the same effect, as if the Member were a named insured if the following conditions are met:
  - (i) The Member has contacted the Board in writing, and in accordance with the Governing Documents, regarding the subject matter of the claim; and
  - (ii) The Member has given the Association at least fifteen days to respond in writing, and, if so requested, has given the Association's agent or representative a reasonable opportunity to inspect the damage; and
  - (iii) The subject matter of the claim falls within the Association's insurance responsibilities.
- (b) *Fidelity Insurance.* The Association shall maintain fidelity bonds or insurance covering anyone who handles or is responsible for funds held or administered by the Association, whether or not compensated for any such services. Fidelity bonds or insurance shall be in conformance with Fannie Mae and FHA guidelines to the extent practical.
- (c) *Insurance on Domestic Water and Sewer Systems.* The Association may obtain insurance for all insurable improvements of the Domestic Water System and Domestic Sewer System in an amount equal to the full replacement value, (i.e., 100% of the replacement cost exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment, common personal property and supplies, and any fixtures or equipment within the Domestic Water System and Domestic Sewer System.  
[C.R.S. §38-33.3-112; C.R.S. §38-33.3-113; C.R.S. §38-33.3-313; C.R.S. §10-4-110.8]

**ARTICLE 6**  
**ASSESSMENTS, COMMON EXPENSES, RESERVE FUNDS, BUDGETS,**  
**FINANCIAL STATEMENTS, AND AUDITS**

[C.R.S. §38-33.3-315; POLICY #2 - Collection of Unpaid Assessments; POLICY #7 - Investment of Reserve Funds;  
POLICY #9 - Reserve Policy]

**6.01 Covenant to Pay Assessments.**

(a) *Covenant to Pay.* Each Member by acceptance of a deed to a Parcel, covenants and agrees to pay when due all General Assessments, Special Assessments, Default Assessments or other charges that the Association is required or permitted to levy or impose on such Member or such Member's Parcel pursuant to the Declaration or any Governing Document. Such Assessments, together with interest, costs and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Parcel against which each such Assessment is made.

(b) *No Waiver.* No Member shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Parcel against which such Assessments or other charges are made.

(c) *Personal Liability.* Each Member shall be personally liable for all Assessments and other charges levied on such Member or such Member's Parcel during the period of such Member's ownership of the Parcel. If there is more than one Owner of a Parcel, each Owner shall be jointly and severally liable with the other Members for all Assessments and other charges levied on the Parcel or any Member. Each such Assessment, together with interest, costs and reasonable attorney's fee, shall also be the personal obligation of the Member at the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to a successor in title unless expressly assumed by them. [C.R.S. §38-33.3-316(6)].

(d) *Costs of Collection.* 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 to attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

**6.02 Allocated Interest Share of Common Expenses.**

(a) *Board Determination of Common Expenses.* Except as otherwise set forth in the Declaration, the Association's Common Expenses shall be determined by the Board.

(b) *Allocated Interest Share of Common Expenses.* The share of Common Expenses allocated to a Parcel shall be an amount equal to the Parcel's Allocated Interest multiplied by the total amount of Common Expenses as determined by the Board to relate to the General Common Elements. Unless otherwise specifically provided herein, Assessments shall be fixed at a uniform rate for all Members. Each Parcel in the Fall Creek Village Subdivision shall be assessed at one-eighth (1/8) or 12.5% of all General Assessments approved by the Board. Expenses associated with the Fall Creek Village Water System and Sewage Treatment System shall be allocated between Parcels with residences, regardless of whether the residences are occupied.

(c) *Interest on Late Payments.* Any past-due Common Expense Assessment or installment thereof shall bear interest at the rate established by the Association, not exceeding eight percent (8%) per year.

(d) *Limitation.* Any Common Expense associated with the maintenance, repair, or replacement benefitting fewer than all of the Parcels or related to any Limited Common Elements shall be assessed against the Parcels benefitted as a Special Assessment.

(e) *Insurance and Utilities.* As may be applicable, the costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.

(f) *Misconduct of Member.* If any Common Expense is caused by the misconduct of any Member, the Association may assess that expense exclusively against such Member's Parcel as a Special or Default Assessment.

(g) *Ownership Transfers.* Each Member is liable for Assessments made against such Member's Parcel during the period of ownership of such Parcel.

(h) *Escrow with Mortgages.* The Association may enter into an escrow agreement with the holder of a Member's Mortgage so that Assessments may be combined with the Member's Mortgage payments and paid at the same time and in the same manner, except that any such escrow agreement shall comply with any applicable rules of the Federal Housing Administration, Department of Housing and Urban Development, Veterans' Administration, or other government agency.

**6.03 Assessment Period, Notice, and Due Date.** The General Assessment period shall commence on January 1 of each year and terminate December 31 of each year. Special Assessments shall be due as determined by the Board. The due dates for General Assessments and Special Assessments shall be established by the Board. Each payment of a General Assessment or Special Assessment shall become delinquent if not paid within thirty (30) days after the due date thereof.

**6.04 General Assessments.** General Assessments shall be made no less frequently than annually and shall be based on a budget for the Common Expenses that is adopted no less frequently than annually by the Association.

(a) *Levy of Assessment.* After the establishment of the Association's annual budget, the Association shall levy a General Assessment for Common Expenses on each Parcel. The amount of the General Assessment levied against a Parcel shall be equal to the amount set forth in the annual budget as the amount of Common Expenses to be raised by General Assessments, multiplied by the Parcel's Allocated Interest.

(b) *Payment Annually.* The Members shall pay the General Assessments levied against their respective Parcels annually as determined by the Board or in accordance with the Bylaws or Governing Documents.

(c) *Amendment of Budget.* If the Members ratify an amendment to the General Assessment portion of the Association's annual budget, the amount of the General Assessment levied against each Parcel shall be adjusted accordingly.

(d) *Default Budget.* If the Members fail to ratify the Association's annual budget for any calendar year prior to January 1 of that calendar year, the Members shall pay the General Assessment to the Association at the rate payable during the prior calendar year until such time as the Members ratify a new annual budget for the then current calendar year. Once the Members ratify a new annual budget, the Association shall levy against each Parcel the General Assessment for the then current calendar year. [C.R.S. §38-33.3-303(4)].

(e) *No Waiver.* The failure of the Association to levy a General Assessment, or assessment for the Domestic Water System or Domestic Sewer System for any calendar year shall not be deemed a waiver, modification or release of a Member's liability for the share of the Common Expenses allocated to such Member's Parcel for that year.

**6.05 Special Assessments.**

(a) *Special Assessment for Budget Shortage.* In the event that the Board shall determine that the General Assessment for a given calendar year is or will become inadequate to meet the Common Expense liability of the Association for any reason including, but not limited to, costs of maintenance and unexpected repairs upon the Common Elements, the Board shall determine the approximate amount necessary to defray such expenses and shall give notice to the Members of a Special Meeting to address the matter, describing the need for and the anticipated amount of the Special Assessment. A Special Assessment regarding a budget shortage shall require a budget amendment made in accordance with the Association Bylaws.

(b) *Special Assessment for Fewer than All Parcels.* A Special Assessment may be levied where any Common Expense is attributable to the operation, maintenance, repair, replacement, alteration or improvement of fewer than all Parcels or to any Limited Common Elements. Normal maintenance, repair and snow removal of the Association roads cannot be a Special Assessment against fewer than all Parcels, however, damage to Association roads caused by a Member or its Guests could be a valid basis for a Special Assessment against any Member. The Association may levy a Special Assessment for such Common Expenses against the Parcels to be improved, repaired or altered, or to which that Limited Common Element is assigned, in a manner as the Association reasonably deems appropriate. Special Assessments attributable to fewer than all Parcels shall not require a budget amendment, but shall require the unanimous approval of the Board.

(c) *Payment as Required by Association.* Each Special Assessment levied against all Parcels regarding a budget shortage shall be shown on an annual budget or an amendment to an annual budget, adopted in accordance with the Bylaws of the Association, and shall be paid as and when required by the Association.

**6.06 Default Assessments.**

(a) *Default Assessment.* Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by the negligence or misconduct of a Member or a Member's Guest, or a violation of any covenant or condition of a Governing Document by a Member or a Member's Guest, the Association may levy an Assessment for such Common Expense against such Member's Parcel. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon a Member for the Member's violation of any covenant or condition of any Association Document shall be a Default Assessment.

(b) *No Amendment to Budget.* Default Assessments need not be approved by the Members, or shown on an annual budget or on an amendment to an annual budget.

(c) *Notice and Opportunity to be Heard.* With respect to any Default Assessment, or portion thereof that is not a late charge, the Member of the Parcel against which the Association seeks to levy the Default Assessment shall

be provided notice and an opportunity to be heard, which may be in conjunction with a hearing regarding a covenant violation. Members of Parcels against which Default Assessments have been levied following an opportunity to be heard shall pay such Default Assessments as and when required by the Board. [POLICY #2 - Collection of Unpaid Assessments] [POLICY #6 - Enforcement of Covenants and Rules]

**6.07 Assignment of Assessments.** The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

**6.08 Surplus Assessment Funds.** Any surplus funds of the Association remaining after payment of or provision for Common Expenses shall be paid to the Members in proportion to their Common Expense liabilities, or credited to the Members to reduce their future Common Expense Assessments or reserve fund accounts, as may be approved by the Members at a regular meeting or a special meeting of the Members called for that purpose. [C.R.S. §38-33.3-314]

**6.09 Reserve Funds.** The Association shall have the right to maintain a reserve fund, or multiple reserve fund accounts, for future or anticipated Common Expenses. The reserve fund(s) may be funded through the annual budget process and the amount of funds placed in reserve in any calendar year shall be determined based on the most recent reserve fund assessment or plan of the Association. Any amount of any Assessment paid by the Member of any Parcel that is attributed to any reserve fund account shall be considered to be a paid Assessment, and amounts contributed by Members to reserve fund accounts shall not be returned to the Member upon the sale of a Parcel. [C.R.S. §38-33.3-209.5; POLICY #2 - Collection of Unpaid Assessments, POLICY #7 - Investment of Reserve Funds, POLICY #9 - Reserve Policy]

**6.10 Budgets, Financial Statements, and Audits.** Budgets, financial statements, and audits shall be administered in accordance with the Bylaws and the Act. [C.R.S. §38-33.3-207; C.R.S. §38-33.3-303; C.R.S. §38-33.3-314; C.R.S. §38-33.3-315]

## **ARTICLE 7 ENFORCEMENT AND REMEDIES**

[C.R.S. §38-33.3-123; C.R.S. §38-33.3-316; POLICY #2 - Collection of Unpaid Assessments; POLICY #6 - Enforcement of Covenants and Rules; POLICY #8 - Dispute Resolution]

### **7.01 Assessment Lien.**

(a) *Statutory Lien.* The Association shall have a statutory lien on each Parcel for any Assessment levied against that Parcel and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Member under any Association Governing Document. All Assessment Liens of the Association shall be administered in accordance with the provisions of C.R.S. §38-33.3-316. The Assessment Lien shall secure all of the foregoing obligations of an Member from 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 date set by any valid Association acceleration of installment obligations.

(b) *Priority.* An Assessment Lien is prior to all other liens and encumbrances on a Parcel, except:  
(i) Liens and encumbrances recorded prior to the recordation of the original Declaration;  
(ii) Liens for real estate taxes and other governmental assessments or charges against the Parcel;  
and  
(iii) A First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent permitted by the Act.

(c) *Record Notice.* The recording of the Declaration constitutes record notice and perfection of an Assessment Lien on each Parcel. No further recordation of any claim of any Assessment Lien is required.

(d) *Extinguishment.* An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured thereby becomes due.

(e) *Legal Actions.* The Association is not prohibited from taking other actions or filing suits to recover sums secured by an Assessment Lien or from taking a deed-in-lieu of foreclosure. The Association shall be entitled to costs and reasonable attorney fees incurred by the Association in obtaining a judgment or decree in any action or suit brought by the Association.

(i) If any Member fails to timely pay assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

(ii) For any failure to comply with the provisions of the Governing Documents other than the payment of assessments or any money or sums due to the Association, the Association, any Member, or any class of

Members adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

(iii) In any civil action to enforce or defend the provisions of the Governing Documents, the court shall award reasonable attorney fees, costs, and costs of collection to the prevailing party. C.R.S. §38-33.3-123.

(iv) The remedies provided by the Declaration or the Act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in the Act or by other rule of law.

(v) Any right or obligation included in the Act or Declaration is enforceable by judicial proceeding.

[C.R.S. §38-33.3-114].

(f) *Receivers.* 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 Member to collect all sums alleged to be owed by the Member 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 against the Parcel.

(g) *Foreclosure.* 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.

(i) The Association may only foreclose on the lien if the balance of the assessments and charges secured by its lien equals or exceeds six (6) months of common expense Assessments based on a periodic budget adopted by the Association and the Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific Parcel on an individual basis. The Board may not delegate its duty to act in this manner to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the Association or a holder or assignee of the Association's lien in connection with an action that is dismissed for this reason may be assessed against the Member. [C.R.S. §38-33.3-316(11)(a)].

(h) *Waiver of Homestead Exemptions.* By acceptance of the deed or other instrument of conveyance of a Parcel, an Member irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, as the same may apply to the Assessment Lien.

(i) *Claim of Lien.* Upon default of any Member in the payment of any General, Special or Default Assessment required hereunder, the Association may cause a claim of lien to be recorded in the office of the Clerk and Recorder in the county in which the Property is situated. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Parcel against which the same has been assessed, and the name of the record owner thereof. Each delinquency shall constitute separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and relief of such delinquent sums and charges. The Association may demand and receive the cost of recording such release before recording the same. Any purchaser or encumbrancer, acting in good faith and for value, may rely upon such notice of satisfaction and relief as conclusive evidence of the facts recited therein.

[C.R.S. §38-33.3-316]

## **7.02 Enforcement**

(a) *Enforcement Methods.* 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. Each provision of the Declaration with respect to an Member or a Parcel shall be enforceable by the Association by any and all remedies available at law or in equity, including, but not limited to, all or any combination of the following remedies:

(i) A proceeding for injunctive relief;

(ii) A suit or action to recover damages, including actions that may be brought in small claims courts pursuant to C.R.S. §13-6-403.

(iii) In the discretion of the Board, for so long as any Member fails to comply with any such provisions, exclusion of such Member and its Guests from participation in any Association affairs; and

(iv) The Association acting through the Board shall have all other rights and remedies available to it under the Declaration and Governing Documents, at law or in equity.

(b) *Legal Proceedings.* If any Member fails to timely pay Assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

(c) *Member's Right of Enforcement.* Except as otherwise provided herein and for any failure to comply with the provisions of the Governing Documents other than the payment of Assessments or any money or sums due to the Association, any Member, or any group of Members adversely affected by such failure to comply shall have the right to enforce any or all of the provisions of the Governing Documents with respect to any Parcel within the Property, by any and all remedies available at law or in equity. Any such Member or group of Members may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

(d) *Attorney Fees.* In any civil action to enforce or defend the provisions of the Governing Documents, the court shall award reasonable attorney fees, costs, and costs of collection to the prevailing party.

(e) *Outcome of Litigation.* In connection with any claim in which a Member is alleged to have violated a provision of the Governing Documents and in which the court finds that the Member prevailed because the Member did not commit the alleged violation, the court shall award the Member reasonable attorney fees and costs incurred in asserting or defending the claim; and the court shall not award costs or attorney fees to the Association. In addition, the Association shall be precluded from allocating to the Member's account any of the Association's costs or attorney fees incurred in asserting or defending the claim. With regard to any litigation regarding enforcement of the Governing Documents, a Member shall not be deemed to have confessed judgment to attorney fees or collection costs.

(f) *Time Limitation on Actions.* Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the Governing Documents, or to compel the removal of any building or Improvement because of the violation of the terms of any such provision unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained. [C.R.S. §38-33.3-123(2)]

(g) *Non-Waiver.* Failure by the Association or any Member to enforce any covenant, condition, restriction, reservation, easement, Assessment, charge, lien or other provision of the Declaration or any other Governing Document shall in no way be deemed to be a waiver of the right to do so thereafter. No action shall be brought against the Association for or on account of its failure to bring any action for any breach of the Declaration.

(h) *Violations and Nuisances.* Every act or omission whereby any provision of the Governing Documents is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Association or any Member. (i) *Violation of Law.* Any violation of any state, municipal or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the Property, is hereby declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures set forth in the Governing Documents.

(j) *Remedies Cumulative.* Each remedy provided by the Governing Documents is cumulative and not exclusive. [C.R.S. §38-33.3-123]

**7.03 Administrative Enforcement Measures.** The Board, or the DRC subject to the Board's approval, may establish procedures and rules to address covenant violations as administrative enforcement measures.

(a) *Enforcement.* If a Member violates any term or condition set forth in the Governing Documents, or any conditions of a DRC approval, the Board or the DRC with respect to DRC decisions, shall have the following rights and remedies:

(i) by written notice to the Member, request that the Member cure the violation within a reasonable period of time as stated in the written notice;

(ii) by written notice to the Member, revoke any approval previously granted to the Member by the Board or DRC as applicable, in which event the Member shall, upon receipt of such notice, immediately cease any activity regarding the prior approval, including any construction, alteration or landscaping covered by the approval so revoked; and

(iii) following an opportunity for the Member to be heard regarding the matter by an impartial decision maker, the Board may enter upon the Member's Parcel and cure such violation on behalf of the Association at the Member's sole cost and expense and cure the default or violation. If the Association cures any such violation, the costs and expenses thereof shall be assessed to the Member as a Default Assessment. The Member shall pay to the Association the amount of the Default Assessment within thirty (30) days after the Member receives notice of the Default Assessment from the Association or as otherwise directed by the Board.

(b) *Disrepair.* If any Member permits any Improvement which it is responsible to maintain to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Board may take action to enforce the condition of disrepair as a violation of the Governing Documents.

**7.04 Fines.**

(a) Notwithstanding any provision of the Act or Governing Documents to the contrary, the Association may not fine any Member for an alleged violation unless:

(i) the Association has adopted, and follows, a written policy governing the imposition of fines; and

(ii) the policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the Member is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the Member notice and an opportunity to be heard before an impartial decision maker.

(b) An "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the Association's covenants, conditions, and restrictions, including its architectural and design requirements and the other Rules and Regulations of the Association, and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general Membership of the Association. If, as a result of the fact-finding process it is determined that the Member should not be held responsible for the alleged violation, the Association shall not allocate to the Member's account any of the Association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding any provision in the Act or Governing Documents to the contrary, a Member shall not be deemed to have consented to pay such costs or fees.

[C.R.S. §38-33.3-209.5]

**ARTICLE 8  
DESIGN REVIEW**

[C.R.S. §38-33.3-303; POLICY #1 - Conduct of Meetings; POLICY #3 - Board Member Conflict of Interest; POLICY #5 - Inspection and Copying of Records; ; POLICY #8 - Dispute Resolution]

**8.01 Improvements to Parcels.** All construction of Improvements on a Parcel and any alteration to the exterior appearance of any existing Improvement on a Parcel shall require written approval of the Design Review Committee for the purposes of determining compliance with the Declaration and Governing Documents, in accordance with adopted DRC Design Review Procedures. The Board may act in the same capacity in the absence of the action of the DRC.

(a) *Duties.* With regard to the construction of Improvements, the DRC shall:

(i) Review all proposals for Improvements within Fall Creek Village Subdivision;

(ii) Issue written statements for approved proposals; and

(iii) Monitor and inspect the construction of any approved Improvements to the extent necessary to determine compliance with the Association's Governing Documents.

(b) *Scope.* The DRC review shall be limited to compliance with the Fall Creek Village Subdivision Declaration and all applicable Governing Documents including the Design Review Procedures. The Member shall be separately responsible for compliance with any applicable federal, state, county or local laws, rule and regulations, including applicable building, plumbing and electrical codes, health department regulations, and all other regulations and laws outside of the Governing Documents. Such responsibilities include obtaining any permits or approvals of other governing entities.

**8.02 Design Review Committee.**

(a) *Design Review Committee.* The DRC is established as a standing committee of the Board and its members are appointed by the Board and serve at the pleasure of the Board.

(b) *Conduct.* The conduct of the DRC shall be in accordance with the provisions of the Bylaws and Governing Documents of the Association.

**8.03 Annual Inspection of Fall Creek Village Subdivision.**

(a) *Annual Inspection.* In furtherance of the provisions of C.R.S. §38-33.3-123, the Design Review Committee will conduct an annual inspection of the entire Fall Creek Village Subdivision to assess the compliance of the external appearance of Improvements with the Governing Documents.

**ARTICLE 9**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
[C.R.S. §38-33.3-205; POLICY #5 - Inspection and Copying of Records]

**9.01 Applicability.** Except as otherwise provided in the Declaration, the covenants, conditions and restrictions set forth in the Declaration shall apply to all Parcels and Common Elements. Any use, condition, covenant or restriction addressed in this Article may be subject to additional Rules and Regulations contained in the Governing Documents.

**9.02 Governing Documents.** Each Member shall comply with, and shall require its Guests to comply with, all provisions of the Governing Documents that apply to such Member or such Member's Parcel.

**9.03 Compliance with Laws.** Nothing shall be done or kept at the Property or on any Parcel in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

**9.04 Compliance with Insurance.** Except as may be approved in writing by the Association, nothing shall be done by any Member and nothing shall be kept at the Property or on any Parcel by any Member that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance. [C.R.S. §38-33.3-313]

**9.05 Use of Parcels.**

(a) *Residential Uses Allowed.* All Parcels shall be used for residential purposes, except that a home-based business or occupation may be carried on in a residence provided it does not interfere with the residential character of the neighborhood of the Fall Creek Village Subdivision, is secondary to the use of the residence as a dwelling place, causes no undue parking or traffic problems, and has no outward appearance of business or commercial use.

(i) *Residential Use Restrictions.* Except as otherwise expressly permitted by the Declaration or in the Governing Documents or other Association approval, a Parcel, after Improved with a residence, may use such residence only as a permanent or vacation residence for the Member and its Guests. No Member shall lease its residence for less than a period of one (1) month. No Member of a Parcel with a residence shall conduct any hospitality business, profession, occupation or trade involving the residence from its residence, including, without limitation, the operation of a "corporate suite", a "short term suite", a "bed and breakfast", a "chalet", a "time-share", an "interval ownership" plan or similar plan, or any use that would contravene applicable laws, regulations, or policies with respect to the eligibility of the Fall Creek Village Subdivision or any Parcels therein to qualify for federally-backed mortgage programs.

(b) *Use of Common Elements.* All Members and their Guests may use the General Common Elements and the Limited Common Elements designed to serve their Parcels for the purposes for which such Common Elements are intended. Neither an Member nor a Guest may use any Common Element in any manner that unreasonably interferes with the rights of other Members in and to the Common Elements. No Member shall cause, or permit its Guests to cause waste to any Common Element. The Members rights to use the Common Elements are subordinate and subject to all of the rights and powers of the Association with respect to the Common Elements, including, without limitation, the Association's right and power to adopt rules regulating the use of the Common Elements.

(c) *Land Use Limitations.* The following land uses are specifically prohibited in the Fall Creek Village Subdivision:

(i) *Hunting.* No hunting, and no discharge of firearms except to protect an Member or Guest from potential danger.

(ii) *Temporary Improvements.* No temporary structure or Improvement shall be placed upon any Parcel without DRC approval. A recreational vehicle may be permitted to be used during construction of Improvements on a Parcel as part of a DRC approval, provided that the recreational vehicle is located on the Parcel on which construction is occurring and it shall be removed within fourteen (14) days of substantial completion of the Improvement. A recreational vehicle that is not used for temporary housing purposes may be parked on a Parcel in accordance with the Governing Documents and or adequately screened from view of the Association roads.

(iii) *Vehicles.*

(1) *Inoperable Vehicles.* All vehicles located on a Parcel must be operational and must have current licenses. Any motorized vehicle or watercraft that is inoperable for a period of longer than thirty (30) days shall be stored in a closed garage, barn or other permanent structure. No vehicle may be left on a Parcel when the Member vacates property after seasonal use unless stored in an enclosed garage, barn or other permanent structure.

(2) *Campers.* A camp trailer, motor home or pick up camper may occupy a Parcel for recreational purposes only, and shall not become a permanent dwelling nor be left on Parcel when not in use unless



stored in an enclosed garage, barn or other permanent structure. Recreational vehicles and campers in actual use by Members and Member's Guests are allowed where feasible on a Parcel for a period not to exceed fourteen (14) days at any time for a maximum thirty (30) days in any calendar year.

(iv) **Temporary Improvements.** No temporary structure or Improvement shall be placed upon any Parcel without DRC approval.

(v) **Mining and Drilling.** No Parcel shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or any other hydrocarbons, minerals, rocks, stones, gravel, or earth, except that the Association may, by appropriate permit, grant, license or easement, allow the drilling of wells for the extraction of water for domestic use and landscape irrigation if such use is in accordance with applicable governmental authorities. The Association may also grant a Member the right to use certain materials from the Parcel in conjunction with the construction of an Improvement, subject to the DRC approval of the proposed land and material use.

(iv) **Subdivision and Timesharing.** No Parcel in the Fall Creek Village Subdivision may be subdivided. No Member shall offer or sell any interest in any Parcel under a "timesharing" or "interval ownership" plan or similar plan.

#### **9.06 Utilities.**

(a) **Utility Connections.** All Parcels except 9 and 10 in the Subdivision have access to connect to the Domestic Water System and Domestic Sewer System. All parcels have access to connect to power and phone utilities that may be installed in the access and utility easement areas as shown on the Plats for utility services to the Parcels. All power, gas, electric, service access lines, telephone and cable TV and similar lines shall be located underground and shall follow designated driveways to the building site or as determined by the DRC. Disturbed areas shall be revegetated immediately after installation.

(b) **Utility Transmission Facilities.** All Improvements on a Parcel relating to the transmission of utilities to the Parcel, including power, gas, electric, service access lines, telephone and cable TV and similar facilities, shall be installed and maintained below the surface of the ground to the extent practical, and shall follow the Association Roads and designated driveway to the building site to the extent practical, even if the distance is longer than other possible service routes.

(c) **Member Responsibility.** The Members shall contact the various utility companies and at their own expense, arrange for the connection of utilities from the primary distribution lines to their homesite or associated outbuildings. Members may install utility service lines for service to their Parcel subject to approval by the DRC and the requirements of the utility service provider.

(d) **Antennas.** No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted without the prior written consent of the DRC and appropriate screening.

(e) **Disturbed Areas.** All disturbed areas resulting from the construction of utility Improvements shall be revegetated immediately after installation.

**9.07 Sewage and Water Supply Facilities.** Prior to occupancy, all residential structures on any Parcel shall be provided at the Member's expense with adequate and approved water supply and sewage treatment facilities provided by the Association and installed and approved in accordance with the Governing Documents and with applicable state law and as enforced by county health departments. In the event that the Placer Valley Sewer District System, or any other central sewer system serving the area makes its services and facilities available to the Fall Creek Village Subdivision, all residential structures shall be connected to such system within sixty (60) days of the date that such services and facilities are available.

**9.08 Watercourses, Irrigation Ditches, and Drainage Features.** All watercourses, irrigation ditches, and drainage features on any Parcel shall be managed in the best interests of the Association. There shall be no alteration, Improvement, or interference with any established watercourse, irrigation ditch, or drainage pattern over any Parcel within the Property unless approved in writing by the DRC. Any alteration, Improvement, or interference with any watercourse, ditch, or drainage shall also comply with applicable local, state, and federal regulation.

(a) **Alterations.** Proposed alterations of established watercourses, irrigation ditches, and drainage features shall be approved by the DRC and the Board. An established watercourse, ditch or drainage feature is one that exists on a Parcel prior to any grading or Improvement of the Parcel or Property, or as shown on any plans approved by the DRC or an approved Improvement site plan for the Parcel.

**9.09 Maintenance of Existing Vegetation.** Existing native vegetation shall not be over-irrigated or mowed to the extent that it is damaged or dies. Any alteration of vegetation within seventy-five (75) feet of all watercourses, as measured from the mean high water mark, must have prior written approval of the DRC. To minimize impacts to existing vegetation, all utilities, improvements, hook-ups, wires, pipes, conduit, lines, cables and the like shall follow

the designated driveway to the building site to the extent practical, even if the distance is longer, except as otherwise approved by the DRC.

(a) Fines. The Association may not levy fines against a Member for violations of declarations, bylaws, or rules of the Association for failure to adequately water landscapes or vegetation for which the Member is responsible when water restrictions or guidelines from the local water district or similar entity are in place and the Member is watering in compliance with such restrictions or guidelines. The Association may require proof from the Member that the Member is watering the landscape or vegetation in a manner that is consistent with the maximum watering permitted by the restrictions or guidelines then in effect. [C.R.S. §38-33.3-106.5; C.R.S. 38-33.3-302(1)(k); C.R.S. §37-60-126(11)(a)].

#### **9.10 Removal of Timber and Existing Vegetation.**

(a) Removal of mature timber and other native vegetation shall be prohibited within the Fall Creek Village Subdivision, with the following exceptions, provided they are made in accordance with the Community Wildfire Protection Plan (“CWPP”):

(i) Removal and cutting of Gambrel Oak and other brush-type vegetation shall be liberally permitted to encourage the reduction of fire hazards by Members, and prior to removal of such vegetation a brief sketch and description of the area to be cleared shall be submitted to the DRC for approval;

(ii) Mowing of grass in meadows shall be permitted;

(iii) Members are responsible for annual noxious weed or plant abatement on their Parcel. Musk weed, thistle or other noxious weeds and plants must be sprayed or eradicated to minimize the spread of such weeds and plants;

(iv) Plans for timber and existing vegetation removal for building construction, yards and gardens, driveway corridors, and view corridors must be submitted for review and approved by the DRC as Improvements prior to any removal activity, and shall comply with landscaping and re-vegetation requirements; and

(v) Other actions in accordance with the Fall Creek Village Subdivision CWPP.

**9.11 Wildlife Management.** The Property and each Parcel will be managed to promote a variety of wildlife populations and habitat. An important goal of the Fall Creek Village Subdivision is to maintain and enhance wildlife populations and habitat through a variety of management techniques including: restoration, establishment and maintenance of native vegetation and grass meadows, controls on dogs to prohibit wildlife harassment, restrictions on artificial feeding programs and bans on hunting. Members may construct protective fencing on their Parcel to protect any landscaping from wildlife damage subject to DRC approval in accordance with the Governing Documents.

**9.12 Animals.** No more than four (4) dogs and a total of four (4) cats or other indoor household pets may be kept on a permanent basis on a Parcel and no such household pets shall be kept, bred, or maintained for any commercial purpose. The right to keep household pets shall be subject to the Rules and Regulations and other Governing Documents, and any such right may be subject to temporary or permanent revocation by the Board if any animal behavior creates a nuisance.

(a) Household pets may be allowed to roam free of a leash when on the Member's Parcel, but shall not be allowed on other Parcels without consent. When in common areas, household pets shall be on a leash unless they can be effectively controlled by the Member's voice or other commands.

(b) Assistance and Service Animals. Reasonable accommodations shall be allowed for persons with disabilities with a documented need for an assistance or service animal.

(c) Domestic Animals. Domestic animals (cats and dogs) may be kept on any Parcel provided they are confined to that Parcel.

(i) Enclosures. Pens or other enclosures for sheltering domestic animals shall be maintained in a clean, orderly and sanitary condition.

(ii) Nuisances. In the event any animal becomes obnoxious, troublesome, dangerous, excessively noisy or destructive to wildlife, or if the Member is unable to or fails to confine the animal to their Parcel, the animal shall be removed at the Member's expense. Significant wildlife species inhabit this area and, if Members do not take preventive measures concerning their domestic animals, interaction with wildlife will cause harm to the wildlife. Members and their Guests should be aware that harassment or harm to wildlife by their domestic pets could result in civil and/or criminal penalties. Dogs shall not be allowed to bark so as to annoy other Member. Excessive barking shall be considered a nuisance.

(iii) Dog Runs. All dog runs must be constructed with quality materials. Location of dog run must not create a nuisance for other homes.

**9.13 Site Improvement Restrictions.** In addition to the DRC Design Standards and Review Procedures and other applicable provisions of the Governing Documents, the following restrictions apply to the Improvement of a Parcel:

(a) *Single Family Residence.* Single family residential structures designed to accommodate no more than a single family, domestic help and Guests may be constructed on each Parcel. Guest quarters may be attached or detached. A garage may be attached or detached. All such structures must be located within the Building Envelope. All residence and other significant structures must be of a similar design and architectural style.

(b) *Ancillary Buildings.* Ancillary buildings and other structures necessary for any allowed use may be constructed on a Parcel. A structure recognized as a separate building is a detached, roofed structure enclosing a minimum of 80 cubic feet within its walls or supports.

(c) *Number of Buildings Per Parcel.* There shall be no more than five buildings constructed upon a single Parcel, including the main residential structure.

(d) *Minimum Size.* Each primary residential structure erected upon a Parcel shall have a floor area of not less than 1250 square feet of interior living space. Detached Guest quarters shall have a floor area of not less than 1000 square feet. The square footage of garages, patios, decks, storage rooms located outside of the main residential area, porches, overhangs, and similar areas shall be excluded from the calculation of minimum size.

(e) *Height Limitation.* No portion of any residential structure shall be more than twenty-five (25) feet in height. Maximum building height is determined by measuring the vertical distance from the average ground level of the building Footprint to the highest point of the roof ridge.

(f) *Limitations.* Mobile, modular, and factory built homes are specifically and expressly prohibited.

(g) *Building Exteriors.* The exterior of all residential structures shall be constructed with logs of no less than eight inches (8") in diameter, or other log material that may be approved by the Board and DRC. Garages may use log siding or other log material that may be approved by the Board and DRC.

(h) *Building Envelopes.* All Improvements shall be located within the Building Envelope as shown on any Plat or as established in a site plan approved by the DRC. Minor amendments to any established Building Envelope may be made with the approval of the DRC subject to an approved amended site plan that is in accordance with the maximum allowable site impact restrictions as defined herein. All DRC-approved site plans or amended site plans showing the approved building envelope shall be recorded. Major relocations or alterations of Building Envelopes, as determined by the DRC or Board, shall require approval of the Board and Members and the amendment of the Declaration and Plats in accordance with the Governing Documents.

(i) *Setbacks.* No Improvements other than driveways, utility facilities, fences, yard areas or landscaping shall be constructed within twenty-five feet (25') of any Association road, or within ten feet (10') of the boundary of any other Parcel without DRC approval.

**9.14 Signs.** Sign Restrictions. No signs whatsoever shall be erected or maintained on a Parcel or the Property, except signs required by legal proceedings, address signs as approved by the DRC, and such other signs such as real estate advertising signs as may be allowed under the Governing Documents.

**9.15 Vehicles.** The use of all on- and off-road vehicles, including but not limited to, trucks, automobiles, motorcycles, and snowmobiles, ATV's, "dirt bikes", and other "off-road" type recreational vehicles shall be confined to designated roadways within the Fall Creek Village Subdivision, except on a Member's Parcel and in conformance with the Governing Documents. Persons or entities conducting business on behalf of the Association are exempt from this restriction.

**9.16 Towing of Vehicles.** The Association may tow vehicles from common areas only in compliance with C.R.S. §40-10.1-405(iv)(B).

**9.17 Maintenance of Buildings, Improvements and Landscaping.**

(a) *Maintenance in Good Repair Required.* No Improvement upon any Parcel shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Member. Any maintenance and/or repair of any Improvement shall not materially alter the appearance, color, or finish, of said Improvement without prior review and approval of the DRC. Members are responsible for the appearance and maintenance of their Parcel in accordance with the stated purposes of the Fall Creek Village Subdivision. All Parcels must be kept neat and have an acceptable appearance. No accumulation of trash, junk, waste materials or weeds is allowed. All Members will be responsible for removal of their own refuse.

(b) *Disrepair.* If any Member permits any Improvement which it is responsible to maintain to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Board may take action to enforce the state of disrepair as a violation of the Governing Documents.

(c) *Alteration of Common Elements and Other Parcels.* Except as otherwise expressly provided in the Declaration or Governing Documents, a Member may not make any alteration of or install any Improvement to its Parcel that affects any Common Element or any other Parcel, without the prior written consent of the DRC or the Board.

#### **9.18 Nuisances, Hazardous Activities and Unsightliness.**

(a) *Nuisances.* No Person shall conduct any activity on the Property which creates a nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Member's Parcel so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Parcel or to its occupants. No noise, including but not limited to, noise or odorous disturbances created by people, animals, equipment, electronic device, audio receiver, television, stereo, musical instrument, and/or machinery, or any other audible nuisance shall be permitted which is offensive or detrimental to the occupants of any other Parcel in the vicinity thereof, or otherwise not in conformance with state law.

(b) *Hazardous Activities.* No Person shall conduct any activity on any Parcel which is or might be hazardous to any other Person or property. No open fires shall be lighted or permitted on any portion of any Parcel except those controlled and attended fires required for clearing or maintenance of land and previously approved by all applicable regulatory agencies, or those within a contained and safe area for cooking and recreational purposes, as long as no agency or Board issued burn ban is in effect. Fires for cooking and recreational purposes are allowed only if there is an adult Member or Guest present.

(c) *Unsightly Articles and Vehicles.* No unsightliness shall be permitted on any Parcel. No unsightly articles shall be visible from the primary roads within the Fall Creek Village Subdivision. Without limiting the generality of the foregoing, trailers, motor homes, trucks (other than pickups), boats, tractors, vehicles (other than automobiles), campers (on or off a vehicle), snowmobiles, snow removal equipment, garden or maintenance equipment, camping and recreational equipment, dilapidated or unrepaired vehicles and similar equipment shall be kept screened from view from the primary roads in the Fall Creek Village Subdivision. Recreational vehicles and campers in actual use by Members and Member's Guests are allowed where feasible on a Parcel for a period not to exceed fourteen (14) days in any thirty (30) day period. All vehicles located on a Parcel must be operational and must have current licenses.

(d) *Trash and Waste Materials.* Refuse, garbage, and trash shall be kept at all times in covered bear-proof containers and appropriately screened from view from the primary roads in the Fall Creek Village Subdivision except on days of trash collection. No lumber, grass, shrub or tree clippings, compost piles or plant waste, metals, bulk materials, unused building material, or refuse, trash, litter or other materials shall be kept, stored or allowed to accumulate on any Parcel, except for slash piles intended to be burned in accordance with the CWPP. Firewood shall be stored on a Member's Parcel in a neat and orderly fashion. No burning of trash, garbage or other waste materials will be permitted on any Parcel or at the Property, except for weed and vegetation control in safe weather conditions, and the burning of slash piles in accordance with the CWPP. All trash or refuse containers shall be wildlife proof, and shall only be allowed to remain outdoors from dawn to dusk on trash pick-up days.

(e) *Outdoor Lighting.* All outdoor lighting shall illuminate only the direct premises on which it is located and not neighboring properties.

#### **9.19 Public Policy Considerations.** Pursuant to C.R.S. §38-33.3-106.5, the Association shall not prohibit any of the following:

(a) *Flags.* The Association shall allow the display of flags on a Member's Parcel when displayed in a manner consistent with the Act and federal law, and subject to the Rules and Regulations of the Association. Flags may be displayed on a Member's property, in a window of a building, or on a balcony adjoining a building. The Association shall not prohibit or regulate the display of flags on the basis of their subject matter, message, or content; except that the Association may prohibit flags bearing commercial messages. The Association may adopt reasonable, content-neutral rules to regulate the number, location, and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole. [C.R.S. §38-33.3-106.5(1)(a)].

(b) *Signs.* The display of a sign shall be allowed by the Member or occupant of a building on property within the boundaries of a building or in a window of the building. The Association shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message, or content; except that the Association may prohibit signs bearing commercial messages. The Association may establish reasonable, content-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors.

(c) *Parking of Service Vehicles.* The Association shall allow the parking of a motor vehicle by the Member or occupant of a Parcel on a road, driveway, or guest parking area in the Fall Creek Village Subdivision if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(i) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(ii) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(iii) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(iv) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Members or their Guests to use roads, driveways, and Guest parking spaces within the Fall Creek Village Subdivision.

(d) *Clearing of Vegetation for Defensible Space.* The Association shall allow the removal by a Member of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan or Community Wildfire Protection Plan (“CWPP”) created for the property, and is no more extensive than necessary to comply with the CWPP. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. Any work conducted by the Association or a Member shall comply with applicable Association standards regarding slash removal, stump height, revegetation, and contractor regulations. [C.R.S. § 38-33.3-106.5(e)].

(e) *Accommodations for Persons With Disabilities.* The Association shall allow reasonable modifications to a Parcel Common Elements as necessary to afford a person with disabilities full use and enjoyment of the Parcel in accordance with the federal Fair Housing Act of 1968, 42 U.S.C. Sec. 3604(f)(3)(A).

(f) *Renewable Energy Devices.* The Association shall not effectively prohibit renewable energy generation devices, as defined in C.R.S. §38-30-168. Solar and wind devices must be allowed, subject to reasonable rules. See C.R.S. §8-30-168. [C.R.S. §38-33.3-106.5(1.5)].

(g) *Flammable Roofing Materials.* The Association shall prohibit the use of cedar shakes or other flammable roofing materials. [C.R.S. §38-33.3-106.5(2)]

(h) *Xeriscaping.* Any provision of the Governing Documents that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass is contrary to public policy under C.R.S. §37-60-125 and, on that basis, any such provision shall be unenforceable by the Association. The Association may adopt and enforce design or aesthetic guidelines or rules that apply to non-vegetative turf grass and drought tolerant vegetative landscapes or regulate the type, number, and placement of drought tolerant plantings and hardscapes that may be installed on a Member's property or on a limited common element or other property for which the Member is responsible. The Association may restrict the installation of nonvegetative turf grass to rear yard locations only. This paragraph does not supersede any subdivision regulation of a county, city and county, or other municipality. [C.R.S. §38-33.3-106.5(1)(i)(A)(I)].

(i) *Rain Barrels.* The Association shall not prohibit the use of a rain barrel, as defined in C.R.S. §37 96.5 102(1), to collect precipitation from a residential rooftop in accordance with C.R.S. §37 96.5 103.

(i) This provision does not confer upon a resident of a common interest community the right to place a rain barrel on property or to connect a rain barrel to any property that is leased, except with permission of the lessor; a common element or a limited common element of a common interest community or maintained by the Association; or attached to one or more other buildings, except with permission of the Owners of the other buildings.

(ii) The Association may impose reasonable aesthetic requirements that govern the placement or external appearance of a rain barrel. [C.R.S. §38 33.3 106.5(1)(j)].

(j) *Religious Items and Symbols on Entry Doors of Units.* The Association shall not prohibit the display of a religious item or symbol on the entry door or entry door frame of a unit; except that the Association may prohibit the display or affixing of an item or symbol to the extent that it:

- (i) Threatens public health or safety;
- (ii) Hinders the opening or closing of an entry door;
- (iii) Violates federal or state law or a municipal ordinance;
- (iv) Contains graphics, language, or any display that is obscene or otherwise illegal; or
- (v) Individually or in combination with other religious items or symbols, covers an area greater than thirty-six square inches.

If the Association is performing maintenance, repair, or replacement of an entry door or door frame that serves a Member's separate interest, the Member may be required to remove a religious item or symbol during the time the work is being performed. After completion of the Association's work, the Member may again display or affix the religious item or symbol. The Association shall provide individual notice to the Member regarding the temporary removal of the religious item or symbol. As used in this provision, "religious item or symbol" means an item or symbol displayed because of a sincerely held religious belief. [C.R.S. §38 33.3 106.5(1)(c.5)].

(k) *Family Child Care Home.* The Association shall not prohibit the operation of a family child care home, as defined in section C.R.S. §26-6-102(13), that is licensed under part 1 of article 6 of title 26, CRS. This provision does not supersede any of the Association's regulations concerning architectural control, parking, landscaping,

noise, or other matters not specific to the operation of a business per se. The Association shall make reasonable accommodation for fencing requirements applicable to licensed family child care homes.

(i) The Association may require the Member or operator of a family child care home to carry liability insurance, at reasonable levels determined by the Association's executive board, providing coverage for any aspect of the operation of the family child care home for personal injury, death, damage to personal property, and damage to real property that occurs in or on the Common Elements, in the unit where the family child care home is located, or in any other unit. The Association shall be named as an additional insured on the liability insurance the family child care home is required to carry, and such insurance must be primary to any insurance the Association is required to carry under the terms of the declaration. [C.R.S. §38-33.3-106.5(1)(k)]. [C.R.S. §38-33.3-106.5]

(l) *Public Rights-of-Way.* The Association shall not prohibit the use of a public right of way in accordance with a local government's (a statutory or home rule county, municipality, or city and county) ordinance, resolution, rule, franchise, license, or charter provision regarding use of the public right of way. Additionally, the Association shall not require that a public right of way be used in a certain manner.

(m) *Electric Vehicle Charging.* The Association shall allow electric vehicle charging stations that are in compliance with C.R.S. §38-33.3-106.8. [C.R.S. §38-33.3-106.5]

**9.20 Energy Efficient Measures.** The Association shall not effectively prohibit the installation or use of an energy efficiency measure.,

(a) An "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(i) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(ii) A garage or attic fan and any associated vents or louvers;

(iii) An evaporative cooler;

(iv) An energy efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device; and

(v) A retractable clothesline that is hidden from view from the Association Roads.

(b) The Association may establish reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, common interest communities shall consider:

(i) The impact on the purchase price and operating costs of the energy efficiency measure;

(ii) The impact on the performance of the energy efficiency measure; and

(ii) The criteria contained in the governing documents of the common interest community.

(c) Established Rules may not impede bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.

(d) A Member does not have the right to place an energy efficiency measure on property that is owned by another person, leased (except with permission of the lessor), that is collateral for a commercial loan (except with permission of the secured party), or a Limited Common Element or General Common Element of a common interest community. [C.R.S. §38-33.3-106.7].

## ARTICLE 10 CONDEMNATION [C.R.S. §38-33.3-107]

**10.01 Applicable Law.** Any condemnation or eminent domain action affecting the Fall Creek Village Subdivision shall comply with the provisions of C.R.S. §38-33.3-107, other applicable provisions of the Act, and other applicable statutes or laws.

**10.02 Condemnation of All Parcels.** If the entire Fall Creek Village Subdivision is taken by condemnation or similar proceeding, the Fall Creek Village Subdivision shall terminate as of the date of the taking, and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association in accordance with the Act.

**10.03 Condemnation of Fewer Than All Parcels.**

(a) *Condemnation of Fewer Than All Parcels.* If individual Parcels or portions of Parcels, but less than all Parcels in the Fall Creek Village Subdivision are taken by condemnation or similar proceeding:

(i) Any condemnation award payable in connection therewith shall be paid to the Association and Members in accordance with the Act;

(ii) The Allocated Interests appurtenant to any Parcels or portions of Parcels taken shall be reallocated; and

(iii) The Declaration and Governing Documents shall be amended and any expenses related to such amendment shall be a Common Expense attributable to all Parcels.

#### **10.04 Condemnation of Common Elements.**

(a) *Condemnation of Common Elements.* If any Common Element 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:

(i) First, to repair any damage to Common Elements resulting from the condemnation or similar taking; and

(ii) Second, for any other Common Expenses.

(b) *Condemnation Award.* The Association shall not be required to pay all or any portion of the condemnation award received for the condemnation or similar taking of a Limited Common Element to the Members of the Parcels served by such Limited Common Element, unless the Association deems it necessary or appropriate to do so.

### **ARTICLE 11 GENERAL**

**12.01 Term.** The covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth in the Declaration shall run with and bind the Property and each Parcel until such a time as the Declaration and common interest community are terminated pursuant to the Declaration and the Act.

**12.02 Termination.** The Fall Creek Village Subdivision common interest community may not be terminated except in compliance with C.R.S. §38-33.3-218 and other applicable provisions of law. [C.R.S. §38-33.3-218]

**12.03 Amendment of Declaration.** The Declaration may be amended only in compliance with C.R.S. §38-33.3-217, C.R.S. §38-33.3-303, and other applicable law, subject to the affirmative vote or agreement of Members of which sixty-seven percent (67%) of the votes in the Association are allocated. If the necessary votes and other required consents are obtained, the Association shall cause an amendment to the Declaration to be recorded in the San Miguel County records in accordance with the terms and conditions of the Act. [C.R.S. §38-33.3-217]

**12.04 Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered in accordance with the Bylaws or other Governing Document provision.

#### **12.05 Applicable Law and Interpretation.**

(a) *Laws of Colorado.* The Declaration shall be construed and governed under the laws of the State of Colorado.

(b) *Liberal Construction.* The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and preservation of the Property in a manner designed to protect and enhance the aesthetic and economic value of the Property.

(c) *Interpretation.* Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of the 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 benefitted or bound by the covenant and the provisions hereof.

**12.06 Severability.** All provisions of the declaration and bylaws are severable. Any determination by any court of competent jurisdiction that any provision of the Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof. [C.R.S. §38-33.3-203, C.R.S. §38-33.3-111.]

**12.07 Reference to Declaration.** Deeds and instruments affecting any Parcel of the Fall Creek Village Subdivision may contain the provisions set forth herein by reference to the Declaration, 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/Member or other person claiming interests or ownership through any deed or other instrument and its heirs, executors, administrators, successors and assigns.

**12.08 Successors and Assigns of Declarant.** Any reference in the Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

**12.09 Captions, Titles, Number and Gender.** All captions and titles of headings of Articles, sections and subsections in the Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof and shall not affect that which is set forth in any of the provision hereof. Wherever the context of the Declaration so requires, words used in the singular shall include the plural and words used in the plural shall include the singular. Wherever the context of the Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, and words used in the feminine gender shall include the masculine and neuter genders.

**12.10 Exhibits.** All exhibits attached to the Declaration are a part of, and are incorporated into, the Declaration.

**KNOW ALL MEN BY THESE PRESENTS,** that the undersigned Board of Directors of the Fall Creek Village Homeowners Association do hereby certify that the above and foregoing Amended and Restated Declaration of Covenants, Conditions, and Restrictions were duly adopted at a meeting of the Members held on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, at which a quorum was present, called for the purpose of amending the Association's Declaration, by the affirmative vote of the Members representing no less than sixty-seven percent (67%) of the Members of the Association, the results of which are on file in the Association records, as a complete replacement for the Association's previous Declaration, and that the above and foregoing Amended and Restated Declaration now constitutes the Declaration of the Association.

DECLARANT:

**FALL CREEK VILLAGE HOMEOWNERS ASSOCIATION**

a Colorado Nonprofit Corporation

\_\_\_\_\_  
By: S. Mark Murray  
Its: President and member of the Board of Directors

ATTEST:

\_\_\_\_\_  
By: \_\_\_\_\_  
Secretary/Treasurer and member of the Board of Directors



**FALL CREEK VILLAGE SUBDIVISION**

A Colorado Common Interest Community  
Located in Section 13, T43N R11W, and Section 18, T43N R10W, N.M.P.M  
San Miguel County, Colorado

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

**Exhibit A**

**Legal Description of Property Subject to Amended and Restated Declaration**

Lots 1 through 10, Fall Creek Village Subdivision, San Miguel County, Colorado, located in Section 13, T43N R11W, and Section 18, T43N R10W, N.M.P.M., San Miguel County, Colorado, according to the Plat, recorded in San Miguel County at Plat Book 1, Page 258, Reception #218255, as amended.