

# AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS OF ENCHANTED FOREST ESTATES

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**AMENDED AND RESTATED DECLARATION  
OF PROTECTIVE COVENANTS OF  
ENCHANTED FOREST ESTATES**

This Amended and Restated Declaration of Protective Covenants of Enchanted Forest Estates ("Covenants") is made effective upon recording.

RECITALS

A. La Plata Abstract Company, a Colorado corporation, as Trustee for Trans-Terra, Inc., an Arizona corporation, recorded the Declaration of Protective Covenants of Enchanted Forest Estates on March 24, 1972, at Reception No. 369823, La Plata County Clerk and Recorder, as amended by the following:

<u>Date</u>	<u>Reception No.</u>
4/10/72	370052
5/15/72	370642
9/5/97	732072
6/17/03	859456
9/13/04	893158
9/16/05	918191
2/1/08	971630
5/12/10	1014009

(Hereinafter referred collectively, along with any other properly adopted amendments that may exist, as the "Original Covenants")

B. Section 3, Paragraph 3.2 of the Original Covenants states that the Original Covenants may be amended by a simple majority vote of members voting, in person, by proxy or by mail at the time of the annual meeting; and

C. The Owners within the Enchanted Forest Estates Community desire to amend and restate the Original Covenants to preserve and enhance the value of the Lots in the Community; and

D. The purpose of the Association is to preserve the value and desirability of the Enchanted Forest Estates Community and to further the interests of the residents of the Community and Members of the Association; and

E. At least a majority of Members voting have approved these Covenants in writing and such Owners have determined these Covenants to be reasonable and not burdensome.

NOW, THEREFORE, the Original Covenants is replaced by the covenants, servitudes, easements, and restrictions set forth below. The Bylaws and Standing Rules contained in the documents recorded with prior versions of the Original Covenants may have also been amended and may be recorded separately from this document but are not required to be recorded

ARTICLE 1  
NAME AND LOCATION

Section 1.1 Name. The name of the Community is Enchanted Forest Estates (hereinafter sometimes called the "Community,") as further defined herein.

Section 1.2 Location. The Property subject to these Covenants and the Act is located in La Plata County, Colorado, as more particularly described on the Plat. The Plat(s) is incorporated herein by reference as fully as if the same was set forth in its entirety herein.

Section 1.3 Number of Lots. The number of Lots included in the Community, at the time these Covenants were presented to Owners for approval, was seventy-eight (78). The Plat depicts eighty (80) Lots. However, pursuant to a Decree Quieting Title recorded on November 19, 1982, at Reception No. 476401, Lots 75 and 76 no longer appear to be separately designated Lots.

ARTICLE 2  
DEFINITIONS

Section 2.1 Generally, terms used in these Covenants, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Colorado Revised Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in these Covenants, the Bylaws and the Articles of Incorporation shall be defined as follows:

(a) Act means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as it may be amended and as applicable to common interest communities created prior to July 1, 1992. The Association has not elected treatment to the Act pursuant to C.R.S. Section 38-33.3-118.

(b) Architectural Committee or Committee means the committee provided for in these Covenants, which committee's purpose is implementing the architectural review provisions of the Covenants to insure appropriate improvement, and harmonious additions, alterations, and Improvements within the Community.

(c) Articles or Articles of Incorporation means the Amended and Restated Articles of Incorporation of Enchanted Forest Estates Property Owners Association, Inc., filed with the Secretary of State of the State of Colorado, as may be amended from time to time.

(d) Assessment means and includes all assessments levied to Lots pursuant to these Covenants or the Act, including interest, late fees, attorney fees, fines, and costs.

(e) Association means Enchanted Forest Estates Property Owners Association, Inc., a Colorado nonprofit corporation, its successors, or assigns.

(f) Board or Board of Directors means the body responsible for management and operation of the Association. The term shall have the same meaning as "Executive Board" as used in the Act.

(g) Bylaws mean the Amended and Restated Bylaws of Enchanted Forest Estates Property Owners Association, Inc., as may be amended from time to time. Such Bylaws do not need to be recorded to be effective.

(h) Common Area shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area at the time of recording consists of roads.

(i) Common Expenses mean the expenditures made or liabilities incurred or anticipated to be incurred by or on behalf the Association for the general benefit of the Community, together with any allocation by the Association to reserves.

U) Community shall mean the planned community known as "Enchanted Forest Estates" and the real property subject to these Covenants and as further defined in the recorded Plat(s) and the legal descriptions contained in these Covenants, and the Members of the Association.

(k) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing within the Community. Such standard may be more specifically determined by the Board of Directors and set forth in rules and regulations.

(l) Governing Documents mean these Covenants, the Articles of Incorporation, the Association's Bylaws, Standing Rules, other rules and regulations and the Plat, all as may be supplemented or amended from time to time.

(m) Lot shall mean and refer to a physical portion of the Community, designated for separate ownership, shown as a Lot on the recorded Plat for the Community together with all appurtenances thereto and improvements now or hereafter located thereon.

(n) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

(o) Member shall mean any Owner. The terms "Member and "Owner" may be used interchangeably.

(p) Occupant means any Person staying overnight in a residence on a Lot for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such Lot.

(q) Owner shall mean the record titleholder of a Lot within the Community, but shall not include any person or entity having such interest as security for the performance of an obligation, including mortgage holders. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.

(r) Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(s) Plat shall mean and refer to the plat(s) of the Property that are subject to these Covenants and that are recorded in the records of the Office of the Clerk and Recorder of La Plata County, Colorado.

(t) Property shall mean the property described in the subdivision plat for Enchanted Forest Estates, recorded on March 24, 1972 at Reception No. 369822 in the records of the Office of the Clerk and Recorder of La Plata County, Colorado, as may be amended from time to time, and as may be affected by the Decree Quietening Title recorded on November 19, 1982 at Reception No. 476401 in the records of the Office of the Clerk and Recorder of La Plata County, Colorado.

### ARTICLE 3 ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES

Section 3.1 Membership. All Lot Owners, by virtue of their ownership of a fee or undivided fee interest in any Lot in the Community, are members of the Association. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, but the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot owned.

Section 3.2 Voting. The Owner or collective Owners of a Lot shall be entitled to one equally weighted vote for such Lot. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves, otherwise the Lot's vote shall be suspended if more than one Person seeks to exercise it.

ARTICLE 4  
EASEMENTS AND COMMON AREA

Section 4.1 Easements for Use and Enjoyment. Every Lot Owner and Occupant shall have a right and non-exclusive easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

- (a) the right of the Association to borrow money as set forth in the Article 5 of these Covenants; and
- (b) the right of the Association to temporarily close portions of the Common Area for maintenance, provided that such closure shall not bar all ingress and egress to a Lot; and
- (c) the right of the Association to adopt rules and regulations concerning the use of the Common Area.

Section 4.2 Easement for Entry. The Association has an easement to enter onto Lots, but not the residences on the Lots, to exercise rights and perform obligations as set forth in these Covenants, provided that exercise of this easement shall not unreasonably interfere with or impair the use of any improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner.

Section 4.3 Support. Every portion of a Lot contributing to the support of an abutting Lot shall be burdened with a non-exclusive easement of support for the benefit of such abutting Lot.

Section 4.4 Utility Easement. There shall be a 10' easement along the side and rear lot lines of each Lot within the Community, and an easement over and through the roads, for the installation, maintenance, repair, and replacement of utility lines, including but not limited to electric lines, gas lines, telephone lines, cable television, sewer lines and water lines. Such easement shall include the right to trim trees and brush which may interfere with a utility. The rights pursuant to this easement shall be exercised in a reasonable and prudent manner.

Section 4.5 Access to Public Lands. No person will be granted access to the public lands adjacent to the Community, except as follows:

- (a) Guest hunters must be staying on a Lot, with the permission of the Lot Owner, to access the public lands through the Community.
- (b) No guest vehicles will be parked on any roadway within the subdivision during hunting season. Vehicles belonging to a Lot Owner may be parked on the side of the roadway in a manner which does not impede traffic. The Board may adopt rules and regulations regarding the activities of guest hunters within the Community.
- (c) Cards will be provided for guest hunters during their stay and must be carried at all times while in the Community. The names, vehicle description, and license numbers of guest hunters' vehicles will be provided to the President of the Association at the time the card is requested. Cards are available from the President, or members of the Board of the Homeowners Association.
- (d) No person staying outside the Community will be granted access through the Community to the public lands.
- (e) No hunting or shooting is allowed within the Community. Camping within the roadways of the Community will not be permitted.
- (f) Guests, whether hunting or not, are expected to abide by the Governing Documents. Owners are responsible for the actions of their guests.

ARTICLE 5  
ASSESSMENTS

Section 5.1 Purpose of Assessment. The Association shall have the power to levy assessments as provided herein. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots in the Community as may be more specifically authorized from time to time by the Board, for the improvement and maintenance of the Common Area, and for the fulfillment of any of the Association's responsibilities pursuant to the Governing Documents or any agreement with La Plata County or other government authorities.

Section 5.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed for the Lot, whether it shall be so expressed in such deed or other conveyance, is deemed to covenant, and agree to pay to the Association: (i) annual assessments or charges (ii) special assessments and (iii) any other charges or fees levied pursuant to the Governing Documents.

All such assessments, together with charges, fees, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs, and expenses) in the maximum amount permitted by law, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The Association shall have authority, but not the obligation, to record a notice of such lien in the La Plata County, Colorado real property records evidencing the lien created under these Covenants. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The lien provided for herein shall have the priority as set forth in C.R.S. Section 38-33.3-316.

If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. No Owner may exempt him or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

Section 5.3 Amount and Due Dates of Annual Assessments. Except as otherwise provided herein, the annual assessment for all Lots shall be \$700.00 per year.

The annual assessment for Lots 1, 2 and 8 shall be \$150. The annual assessment for such Lots is less because they do not have driveway access from subdivision roads and their driveways do not adjoin the subdivision roads.

The annual assessment for each Lot shall be due in one lump sum on October 1 of each year or in two equal payments on October 1 and April 1.

The amount of the annual assessment may be increased or decreased upon the vote of a majority of the Members voting, in person or by proxy, at any Member meeting, provided that notice of the proposed change has been sent to Members at least 30 days but not more than 60 days prior to such meeting.

Section 5.4 Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a) If the annual assessment, any part, or installment thereof or any other fine, special assessment or charge is not paid in full within 30 days of the due date:

(i) a late charge in an amount determined by the Board and set forth in the Association's collection policy may be imposed without further notice or warning to the delinquent Owner; and

(ii) interest at the rate determined by the Board and set forth in the Association's

collection policy, not to exceed the maximum amount permitted by Colorado law, may be imposed without further notice or warning to the delinquent Owner.

(b) Failure to make payment within 60 days of the due date may cause the total amount of an assessment for the remainder of the fiscal year to become immediately due and payable, upon written notice. Upon acceleration, that Owner shall thereby lose the privilege of paying any and all assessments and charges in installments for that fiscal year, unless such privilege is otherwise reinstated in the Board's sole discretion.

(c) If assessments, fines or other charges, or any part thereof, remain unpaid more than 30 days after the assessment payments first become delinquent, the Owner's right to vote shall be automatically suspended until all amounts owed are paid in full. Further, the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Covenants, the Bylaws, and Colorado law, including reasonable attorney's fees actually incurred. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions.

(d) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges, or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges, or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

(e) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment or related charges, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.5 Special Assessments. In addition to the annual assessment provided for above, the Board may, at any time, and in addition to any other rights it may have, propose a special assessment against all Owners, which may be paid over a period of years, for the purpose of defraying prior cost overruns, unbudgeted expenses or expenses in excess of those budgeted including, without limitation, the costs of any construction, restoration or unbudgeted repairs to roads and costs incurred in fulfilling any of the Association's obligations. Such special assessment shall become effective upon the approval of 67% of the Members present and voting, in person or by proxy, at a Member meeting called for such purpose. Notice of such meeting shall be sent to Members at least 30 days but not more than 60 days prior to such meeting.

Section 5.6 Special Assessments for Snow Removal. In the event snow removal costs exceed the amount budgeted for snow removal in the fiscal year, the Board may levy a special assessment against all developed Lots and developing Lots, with the exception of Lots 1 and 2, in equal amount to cover any shortfall. Such special assessment shall not require the approval of Members. Such special assessment shall be used for the sole purpose of paying snow removal expenses, unless another purpose is approved by a majority of the Members voting, in person or by proxy or by mail, at a Member meeting. Notice of such proposal must be sent at least 30 days prior to the meeting.

Section 5.7 Statement of Account. The Association shall furnish to an Owner or the Owner's designee or to a holder of a security interest or its designee a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or holder of a security interest has an interest. The Association shall deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party within 14 calendar days after the registered agent of the Association receives the request by personal delivery or by certified mail, first class postage prepaid,



return receipt requested. The information contained in such statement, when signed by the Treasurer of the Association, or Manager, if any, shall be binding upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith. The Board may establish a reasonable fee relating to such statement.

Section 5.8 Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (i) distributed to the Owners; (ii) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Lot; or (iii) added to the Association's capital reserve account.

Section 5.9 Borrowing. The Association shall have the power to assign its right to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments, but only upon the affirmative vote of 67% of the Owners present and voting, in person or by proxy at a Member meeting called for that purpose.

## ARTICLE 6 MAINTENANCE RESPONSIBILITY

Section 6.1 By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of the Owner's Lot consistent with the Community-Wide Standard. This maintenance responsibility shall include, but not be limited to the following:

(a) Improvements. Each Owner shall be responsible for maintenance, repair and replacement of the property and improvements located within their Lot boundaries, including exterior lighting, decks, patios, driveways, sidewalks, doors, garage doors, windows and painting or staining the exterior surfaces of the improvements on the Lot.

(b) Landscaping. Each Owner shall maintain the landscaping on the Lot in a safe, neat, attractive and well-kept condition, which may include cultivated lawns mowed, hedges, shrubs, and trees pruned and trimmed as appropriate, adequate watering of cultivated areas, replacement of dead, diseased or unsightly materials, and removal of weeds and debris. Landscaping shall not be maintained in any manner which impairs the ability of drivers to have unobstructed views of the street.

In addition, each Owner shall have the responsibility to perform his or her responsibilities in such manner so as not to unreasonably disturb other persons in other Lots or to damage other Lots.

Section 6.2 By the Association. The Association shall maintain and keep in good repair as a Common Expense all roads within the Community.

Section 6.3 Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items for which the Lot Owner is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the Owner shall have 30 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 30 days. If the Board determines that:

(a) an emergency exists or (b) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be the personal obligation of the Owner and a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

Section 6.4 Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under these Covenants may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

## ARTICLE 7 ARCHITECTURAL CONTROLS

Section 7.1 Architectural Control Committee. The Architectural Control Committee ("Committee") shall consist of not less than three or more than five members appointed by the Board of Directors. Members of the Committee appointed by the Board may be removed at any time by the Board and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

Section 7.2 Design Guidelines. The Committee may propose architectural guidelines ("Design Guidelines") in furtherance of the restrictions contained in these Covenants, from time to time, which guidelines shall be subject to approval by the Board of Directors and which, if approved, shall become part of the rules and regulations and Governing Documents of the Association. Such Design Guidelines may include location, number, size and height limitations or restrictions for various types of improvements, including but not limited to sheds and other outbuildings, fences and pools; hours of construction within the Community; and requirements regarding the installation of renewable energy generation devices, as defined in C.R.S. Section 38-30-168, as may be amended from time to time, and of energy efficiency measures, as defined in C.R.S. Section 38-33.3-106.7, as may be amended from time to time. Such Design Guidelines may also include types of modifications or improvements that do not require approval.

Section 7.3 Approval Required. No structures, including, but not limited to, residences, accessory buildings (i.e. sheds, guest houses, stables), tennis courts and sports courts, swimming pools, flag poles, fences, walls, landscaping (including the removal of trees), gazebos, recreation equipment, driveways, or any other improvement shall be constructed, erected, installed or modified on a Lot, nor shall any structure or attachments to the exterior of a residence (including, but not limited to roof replacement, awnings, patios, or decks) be commenced within the Community unless complete plans on specifications shall have been first submitted to and approved in writing by the Committee.

Section 7.4 Application Procedure. The Committee may require that applications and plans and specifications show exterior design, height, materials, color, topography, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks, and grading plan, as well as such other materials and information as may be required by the Committee and/or set forth in the Design Guidelines. Applications shall be submitted to the Committee chairperson or other person designated by the Committee. Applications shall be reviewed at meetings of the Committee. Owners submitting applications are responsible for providing documentation to the Committee regarding harmony of external design, effective location and use of improvements, preservation of aesthetic beauty and conformity with specifications and purposes generally set forth in these Covenants and the Design Guidelines. The Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the application. Notwithstanding Section 7.9 below, until receipt by the Committee of all required materials in connection with the application, the Committee may postpone review of any materials submitted for approval.

Section 7.5 Role of Road Committee. The Road Committee shall have the authority to review all plans and specifications submitted to the Committee with respect to any plans to connect to the roads within the Community and shall have the authority to approve or disapprove such connections. Such approval or disapproval shall be provided in writing to the Committee. In the event the connection plan is disapproved, the Road Committee shall provide a description of the work or modifications needed to obtain approval.

Section 7.6 Notice to Neighbors. Owners may be required to notify adjacent and/or contiguous neighbors of their application for alterations or changes to the exterior of the Improvements on their Lots or to their landscaping. The Committee may require additional notifications if it deems necessary based upon the nature of the alteration.

Section 7.7 Fees. The Committee shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of the Lot for which plans, and specifications have been submitted for approval. Prior to incurring such costs, the Committee shall notify the Owner of its belief that such consultations are necessary. When reasonably possible, the Committee shall provide an estimate of the expected costs. The Owner shall then have the right to withdraw the submission. The submission shall not be deemed to be complete until the Owner advises the Committee, in writing, of his/her choice to continue with the submission or to withdraw the submission. If the Owner chooses to continue with the submission, the Owner shall be responsible for paying the full cost of each review, whether or not submitted plans and specifications are approved by the Board, and the Board may require payment of all such costs prior to approval of plans and specifications.

During the approval process, the Committee shall appoint a subcommittee of 3 Members which shall, in cooperation with the Road Committee, determine the condition of the roads in the Community that will likely be impacted by the construction. The subcommittee shall submit its written findings to the Committee, which shall notify the Owner requesting approval of the condition of the roads. Upon completion of construction, a subcommittee, in cooperation with the Road Committee, shall determine the condition of the roads to determine whether any repairs are needed as a result of the construction. Any repairs needed shall be made at the expense of the Owner, and such cost shall be an Assessment and lien against the Lot.

The Committee may require the Owner to execute a construction bond in the amount of \$10,000, or such other amount as determined by the Committee based on the nature of the improvement, prior to the commencement of construction.

Section 7.8 Architectural Review Criteria. The Committee shall exercise its reasonable judgment to the end that proposed improvements, construction, alterations, or landscaping conform to and harmonize with the existing surroundings, residences, landscaping, and structures and are suitable for the Lot upon which it is to be made. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. The standard for approval shall include, but not be limited to: (a) conformity and harmony of exterior appearances of structures with neighboring structures, including design compatibility and scale; (b) color and materials to be used; (c) effective location and impact on nearby Lots; (d) relation to the natural environment; (e) preservation of aesthetic beauty and conformity with the specifications and purposes generally set out in these Covenants and in the Design Guidelines; and (f) any other matter deemed to be relevant or appropriate by the Committee.

Section 7.9 Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by these Covenants in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in the Covenants or in the Design Guidelines, provided that such variance is not materially detrimental or injurious to other Lots. Variances may only be granted after a hearing before the Committee upon 30 days notice to all Members.

Section 7.10 Reply and Communication. If the Committee fails to approve or to disapprove such application within 30 days after the application and all information as the Committee may reasonably require has been submitted, then the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President of the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within 15 days of receipt of the Owner's notice, the approval will not be required and this Article will be deemed complied with as to the items specifically identified in the application; provided, however, even if the

requirements of this Article are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Covenants, the Bylaws, or the Design Guidelines or other rules and regulations of the Association or of any applicable zoning or other laws.

Section 7.11 Commencement of Construction. All changes, modifications and improvements approved by the Committee hereunder must be commenced within six months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked, unless the Committee gives a written extension for commencing the work. During construction of an improvement, the Committee or its representative(s) are authorized to enter onto the Lot for exterior inspection at a mutually agreed time, if required.

Section 7.12 Completion of Construction.

(a) Unless otherwise agreed to in writing by the Committee, all work approved by the Committee hereunder shall be completed in its entirety within three months from the date of commencement, provided that construction of a primary residence on a Lot shall be completed in its entirety within twelve months from the date of construction. All approved changes, modifications, and improvements must be completed in their entirety in accordance with the approved plans. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

(b) Upon completion, the Owner shall give a written Notice of Completion to the Committee. Until the date of receipt of the Notice of Completion, the Association shall not be deemed to have notice of completion of the work and any applicable statute of limitations will be tolled.

Section 7.13 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee determines that work has been done without obtaining approval of the Committee, was not performed in accordance with the terms of the approved application, or was not completed within the required time frame, the Committee shall notify the Owner in writing of the noncompliance, specifying the particulars of the noncompliance. Within 45 days of the notice of noncompliance, the Owner, at the Owner's expense and cost, shall remedy the noncompliant condition or conditions or restore the Lot to substantially the same condition as it existed prior to commencement of the improvement, alteration, installation, or construction.

Section 7.14 Right to Appeal. An Owner may appeal any decision of the Committee to the Board of Directors by written appeal submitted to the Board within 30 days of the date that the Committee decision or notice is mailed to the Owner. The Board of Directors shall review the decision of the Committee and all materials submitted to the Committee pursuant to the criteria set forth in Section 7.7 above and the Design Guidelines. Any decision of the Committee may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the Board concludes that the Committee's decision was inconsistent with the criteria set forth in this Article and the Design Guidelines.

Section 7.15 Limitation of Liability. Review and approval of any application pursuant to this Article may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board of Directors nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations, and other governmental requirements. Neither the Association, the Board of Directors, the Committee nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or modifications to any Lot, nor may any action be brought against the Association, the Board of Directors, the Committee, or any member thereof, for any such injury, damage, or loss.

Section 7.16 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Committee and the Board of Directors will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Committee and Board of Directors may adopt different architectural standards for different parts of the Community, based on street visibility and location of the proposed modification. The approval of the

Committee or Board of Directors of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee or Board of Directors, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 7.17 Records. The Committee shall report in writing to the board of Directors all final actions of the Committee. The Association shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto.

Section 7.18 Enforcement. Any construction, alteration or other work done in violation of this Article, any other provision of these Covenants, the Design Guidelines or any applicable zoning regulation shall be deemed to be nonconforming. Upon written request from the Board, a violating Owner shall, at the Owner's own cost and expense, remove such nonconforming construction, alteration or other work and restore the Lot to substantially the same condition as existed prior to such construction, alteration, or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to impose fines in an amount to reasonably encourage compliance after notice and an opportunity for hearing.

The Association shall also have the authority and standing on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article, and its decisions or those of the Committee. Furthermore, the Association shall have the authority to record in the La Plata County land records Notices of Noncompliance with the provisions of this Article. The Association shall have the right to seek attorney fees incurred in enforcing the provisions of this Article.

## ARTICLE 8 USE AND BUILDING RESTRICTIONS

Each Lot Owner shall be responsible for ensuring that the Owner's family, guests, tenants, and Occupants comply with all provisions of the Governing Documents of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants, or Occupants, as a result of such person's violation of the Governing Documents, the Association may take action against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants, or Occupants.

In addition to the following use restrictions, the Board of Directors may adopt rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

### Section 8.1 Use of Lots.

(a) Residential Lots. All Lots other than Lots 1, 2, 3, 6, 8, 39, 40, 58, 60, 62 and 80 shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a residence on a Lot may conduct ancillary business activities within the residence so long as:

- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Lot; and
- (ii) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers, or other business invitees in greater volume than would normally be expected for guest visitation to a residence without business activity; and
- (iii) the business activity is legal and conforms to all zoning requirements for the Community; and
- (iv) the business activity does not increase traffic in the Community in excess of what

would normally be expected for a residential subdivision without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); and

(v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Community, as determined in the Board's discretion.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for the activity.

Each Owner conducting an ancillary business activity shall advise the Association of such use.

(b) Occupancy. If a residential Lot Owner is a corporation, partnership, trust, or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the residence on the Lot. The designated person(s) to occupy the residence on the Lot may not be changed more frequently than once every six months without the express written consent of the Board as determined in the Board's sole discretion.

(c) Commercial Lots. Lots 1,2,3,6,8,39,40,58,60,62 and 80 shall be designated for commercial use, as approved by the Association, and as permitted by La Plata County's land use plans and regulations and its Florida Road District Plan. No commercial operation may be commenced without first obtaining the written approval of the Board of Directors. The Board may adopt rules and regulations regarding commercial uses.

Section 8.2 Leasing and Occupancy. The Community is intended to be an owner-occupied community. However, any Lot Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Lot Owner may deem advisable, subject to restrictions of these Covenants, subject to restrictions of record, and subject to the following:

(a) "Leasing" for the purposes of these Covenants is defined as regular, exclusive occupancy of a Lot by any person other than the Owner. For the purposes of these Covenants, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing under these Covenants.

(b) All leases shall be for a minimum term of one month.

(c) All leases shall be in writing and shall provide that the lease is subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Covenants and any rules and regulations of the Association.

(d) Each Owner who leases his or her Lot shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants.

(e) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.

(f) All leases shall state that the failure of the tenant or their guests to comply with the terms of the Governing Documents shall constitute a default of the lease and of these Covenants and such default shall be enforceable by either the Association or the landlord, or by both of them.

(g) Leases shall be for or of the entire Lot.

(h) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

Section 8.3 Subdivision. No Lot may be further subdivided if the result would be to create a Lot of three (3) acres or less, unless central sewage disposal is provided. Notwithstanding the foregoing, any such subdivision shall require the prior written approval of the Association. No Lots may be combined.

Section 8.4 Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board of Directors, nothing shall be done or kept on a Lot that would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

No noxious, destructive, offensive, or unsanitary activity shall be carried on upon any Lot. No Owner or Occupant may use or allow the use of the Lot or any portion of the Community at any time, in any way, which may endanger the health or property of other Owners or Occupants, unreasonably annoy, disturb, or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Community. The Board of Directors may adopt rules and regulations defining activity that constitutes unauthorized and unreasonable annoyances or disturbances.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Colorado law.

Section 8.5 Construction of Buildings on Residential Lots. No building shall be erected, altered, placed, or permitted to remain on any residential Lot other than one (1) detached single family dwelling with a garage for not more than four (4) cars (attached or unattached), and a detached single family guest house, which is not to be used for rental purposes. The living area of the primary residence, excluding open porches and garages, shall not be less than 1200 square feet. Any additional covered storage area, of any type, shall not exceed 300 square feet in total. The Design Guidelines may contain additional restrictions regarding the size, location, and appearance of all such structures.

All buildings shall be of new construction. Any building placed, erected or maintained upon any Lot shall be entirely constructed thereon, and the same shall not nor shall any part thereof be moved or placed there on from elsewhere. Mobile homes and modular homes are not permitted.

Section 8.6 Setback Requirements. The setback requirements shall be as follows:

(a) No building shall be located on any Lot nearer than 30 feet from the street easement (which may be determined by the Committee in the event of a dispute) nor 20 feet from the side Lot lines.

(b) No solid wall, gate, or fence over three (3) feet in height shall be erected or maintained nearer than 30 feet from the street easement.

Section 8.7 Building Material. All building materials shall be of high quality and must be approved by the Committee, provided that no structure shall be constructed of or coated with any aluminum surfaces or other highly reflective coating or coloring, or any substance which might interfere with the view from other Lots. No windows may be covered with aluminum foil or other highly reflective substance or covering.

Section 8.8 Protection of Natural Environment. All improvement and construction on a Lot shall be performed so as to protect and preserve the natural growth and condition of the Lot, including the trees, shrubs, streams, and natural setting, in as near as its natural state as possible.

Section 8.9 Storage Areas. All storage areas must be approved by the Committee. Plans for covered storage areas of no more 100 square feet, including those used for firewood storage, shall require a site plan showing the relationship to other structures on the Lot and the Lot lines, along with a written description regarding the compatibility of the proposed structure with its surroundings. Plans for covered storage areas of 100 square feet to 300 square feet shall require a site plan, and foundation and construction details, as well as any other information required by the Committee. Covered storage areas greater than 300 square feet are not permitted.

Section 8.10 Sanitary Systems.

(a) All sewage disposal systems shall be in accordance with the requirement of the San Juan Basin Health Unit and the Colorado State Department of Health. All sewage disposal shall be installed to serve each residence (or commercial building if applicable) or be self-contained. The effluent from septic tanks shall not be permitted to discharge into a stream, storm sewer, open ditch or drain, unless it has first passed through an absorption field or through an aerator and retention pond as approved by the appropriate health authority(ies).

(b) Each Lot Owner agrees that in the event the appropriate officials and/or departments of La Plata County determine that the surface and sub-surface water in the area is becoming contaminated by the use of septic systems or other sewage disposal systems in the area, the Lot Owner shall install, at their individual expense, a commercial or private sewage disposal system within the time frame required by the County. In the event the County does not set a time frame, the Association shall establish a reasonable time frame in which Owners must install the system.

(c) Portable, self-contained sanitation units must be maintained on the Lot while a residence (or commercial building if appropriate) is constructed.

Section 8.11 Fences. All fences shall require approval by the Committee. No side or rear fence, and no side or rear wall, other than the wall of the primary building constructed on any Lot, shall be more than six (6) feet in height. No wire fences shall be constructed on any Lots, provided that an Owner may install a wire fenced kennel area for a pet, subject to approval and size requirements which may be established by the Committee. All fences bordering County Road 240 shall be of a uniform designed approved by the Committee.

Section 8.12 Signs. Except as may be provided for herein or as may be required by state law or legal proceedings, no signs (include "For Sale" signs), advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain on a Lot without the prior written consent of the Committee.

Section 8.13 Antennas and Satellite Dishes. No satellite dish or antenna may be located on a Lot within 15 feet of any Lot line. Satellite dishes and antennas shall be placed in an area that is inconspicuous from other Lots and the roads. The Committee may require screening and/or camouflaging of any satellite dishes and antenna. The Association may adopt rules and regulations regarding the location and approval of antennas and satellite dishes, consistent with federal law.

Section 8.14 Vehicles and Parking. All vehicles parked on a Lot must be maintained in an operable condition and have current license registration. Any vehicle which is not operable or could not be driven on a public street must be kept inside an enclosed garage. Recreational vehicles may be stored on developed Lots in a location that is adequately screened from view from other Lots and the roads, as determined by the Committee. Owners of developing Lots or undeveloped Lots may park and use a recreational vehicle on such Lot for up to one month per year, unless a written extension is granted by the Board.



No vehicles may be parked on any road in the Community nor adjacent to or in any waterway on a Lot.

No vehicles or other equipment may be dismantled or allowed to accumulate on any Lot.

Section 8.15 Animals/Pets.

(a) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any residential Lots, except that household pets may be kept, provided they are not kept, bred, or maintained for a commercial purpose and do not become a nuisance to others. Household pets are domesticated animals traditionally kept in the home for pleasure, such as dogs, cats, birds, fish, small rodents, and small reptiles, but do not include farm animals such as cows, horses, goats, sheep, pigs, ducks or chickens. All permitted animals must be kept within the boundaries of the Lot and are not permitted to access other Lots.

(b) Notwithstanding the foregoing restriction against horses, Lots 5, 7 and 38 have been granted a waiver to maintain up to two horses on the Lot with a corral system. At all times the Owner of a Lot with such a waiver shall ensure that manure and soiled bedding is collected and properly removed to avoid odors, nuisances, and potential health hazards. Upon the sale or conveyance of the Lot to a new Owner, the waiver shall be automatically revoked, and the new Owner shall not be permitted to house horses. If the Owner does not remove the corral system, the Owner shall be responsible for ensuring it is maintained in a good and attractive condition.

Section 8.16 Unsightly Articles. No unsightly article shall be permitted to remain on any Lot if it is visible from adjoining property or the road. All Lots shall be kept clean of debris, garbage, trash and accumulation of fire fuels and natural growth and planting so as not to become a detriment to other Lots.

Section 8.17 Hazardous Activities. No activities shall be conducted on a Lot and no improvements shall be constructed on a Lot that are, or might be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon a Lot (except as may be permitted by Colorado law in defense of property or life), and no open fires shall be lighted or permitted on a Lot, except in a contained barbeque unit while attended and in use for cooking purposes, or within an interior or exterior fireplace designed to prevent dispersal of burning embers. All fires must be in compliance with La Plata County regulations and the Upper Pine River Fire District rules and guidelines and must be attended at all times.

Section 8.18 Rules and Regulations. The Board of Directors may adopt, amend, and repeal rules and regulations concerning and governing the Community in furtherance of the provisions of this Covenants and the general plan of development, following notice to Members and a reasonable period of Member comment. The Board of Directors may also establish and enforce penalties for infractions of the rules, including, but not limited to fines.

## ARTICLE 9 INSURANCE

Section 9.1 Insurance on the Lots. Each Owner is advised to obtain hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, the other property of that Owner, and any injuries occurring to the persons while on a Lot.

Section 9.2 Association Liability Insurance. The Association shall obtain public liability and property damage liability insurance covering the Common Area, in such amounts as the Board may determine from time to time, covering claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 9.3 Association Fidelity Insurance. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, and

employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 9.4 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 9.5 Directors' and Officers' Personal Liability Insurance. The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting on behalf of the Association.

Section 9.6 General Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, the insurance coverage set forth herein, which shall contain waivers of subrogation, waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 30 days prior written notice to all of the Owners, holders of first lien security interests and the Association.

Section 9.7 Other Association Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.8 Insurance Premium. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 9.9 Claims and Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners, and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.10 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount as an assessment in compliance with and under the terms of these Covenants.

Section 9.11 Damage to or Destruction of Structures on Lots. In the event of damage to or destruction of structures on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with these Covenants, unless a determination not to rebuild is made by the Lot Owner in case of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall promptly clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with these Covenants.

ARTICLE 10  
AUTHORITY AND ENFORCEMENT

Section 10.1 General. The Property shall be used only for those uses and purposes set out in these Covenants. Every Owner and Occupant shall comply with these Covenants, the Bylaws and rules and regulations of the Association, and any lack of compliance shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Covenants, Bylaws or rules and regulations. In addition to any rights the Association may have against an Owner's family, guests, tenants, or Occupants, as a result of such person's violation of the Governing Documents, the Association may take action under these Covenants against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

Section 10.2 Enforcement. The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for violations of the Governing Documents, including, without limitation:

- (a) after notice and opportunity for a hearing, imposing reasonable monetary fines, which shall constitute a lien on the violator's Lot; and
- (b) suspending the right to vote; and
- (c) exercising self-help (including, but not limited to, performing such maintenance responsibilities that are the Owner's responsibility and assessing costs incurred by the Association against the Lot as an assessment in accordance with the notice requirements of these Covenants) or taking other action to abate any violation of the Governing Documents; provided that the Association shall not have authority to enter the interior of a residence on a Lot; and
- (d) requiring an Owner, at the Owner's expense, to remove any structure or improvement on the Owner's Lot in violation of the Governing Documents as more particularly provided for in Article 7 of these Covenants; and
- (e) bringing a suit at law or in equity to enjoin any violation or to recover monetary damages or both; and
- (f) recording a notice of noncompliance against the Lot in the La Plata County records for any violation of the Governing Documents.

All remedies set forth in the Governing Documents are cumulative. The Board shall have the discretion to determine whether enforcement action in any particular case shall be pursued; provided that the Board shall exercise judgment, be reasonable and not be arbitrary and capricious. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

Section 10.3 Failure to Enforce. Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so.

ARTICLE 11  
AMENDMENTS

These Covenants may be amended by the affirmative vote of 67% of the Member voting, in person or by proxy or by mail, at a Member meeting called for such purpose. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the language of the

proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association, or such other officers as designated by the Board, and recorded in the La Plata County, Colorado real property records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Covenants to correct any scrivener's errors, comply with any applicable state, city, or federal law, and/or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

Any Member may propose amendments to these Covenants by submitting the proposed change and the reason therefor, in writing, to the Rules and Bylaws Committee. The Rules and Bylaws Committee must receive the proposal prior to a member meeting in order for it to be presented for consideration.

Any action to challenge the validity of an amendment adopted under this Article must be brought within one year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

## ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Implied Rights. The Association may exercise any right or privilege given to it expressly by these Covenants, the Bylaws, the Articles of Incorporation, any use restriction, or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 12.2 Electronic Records, Notices and Signatures. Notwithstanding any other portion of these Covenants, records, signatures, and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by these Covenants, unless otherwise specified.

Section 12.3 Duration. The covenants and restrictions of these Covenants shall run with and bind the Property perpetually unless otherwise terminated as provided herein and in the Act.

Section 12.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order, or otherwise, shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

Section 12.5 Registration of Mailing Address. Each Owner shall register their mailing address with the Association and notice or demands intended to be served upon the Owner shall be addressed in the name of the Owner at such registered address.

Section 12.6 Interpretation. The provisions of these Covenants shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals and the mission statement of these Covenants. These Covenants shall be construed and governed under Colorado law.

Section 12.7 Conflict of Provisions. In case of conflict between these Covenants and the Articles or Bylaw, these Covenants shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

IN WITNESS WHEREOF, the undersigned officer of Enchanted Forest Estates Property Owners Association, Inc. hereby certify that these Amended and Restated Covenants was adopted by the Members of the Association at the annual meeting on August 14, 2022.

This 29<sup>th</sup> day of November, 2022.

ENCHANTED FOREST ESTATES PROPERTY OWNERS ASSOCIATION, INC.

By: Mary A. Lasser

STATE OF COLORADO )  
COUNTY OF LAPLATA ) ss.

The foregoing Covenants were acknowledged before me by Mary Lasser  
On the Association, on this 29<sup>th</sup> day of November, 2022.

[Signature]  
Notary Public

My commission expires: 2/6/2023 2023

