

①

803

**SECOND  
AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
STIRLING RANCH, P.U.D.**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR STIRLING RANCH, P.U.D. ("Declaration") is made as of May 1, 2003, by Stirling-Sun Mesa, Inc. a Colorado corporation ("Declarant").

**RECITALS**

A. Declarant is the owner or developer of certain real property located in Garfield County, Colorado, more particularly described on the Final Plat for Stirling Ranch P.U.D. which was recorded in the real property records of Garfield County, Colorado, on May 14, 2002, Reception No. 603325 (the "Property").

B. Declarant desires to create a Planned Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §§ 38-33.3-101 to -319 (the "Act") on the Property. This Planned Community shall be known as "Stirling Ranch."

C. Another proposed residential development, to be known as the Sun Mesa P.U.D., was previously approved by Garfield County upon property now within the Stirling Ranch, P.U.D. A Declaration of Protective Covenants, Conditions and Restrictions of Sun Mesa P.U.D. ("Sun Mesa P.U.D. Covenants") was recorded in Book 1120 on Pages 291 to 310 of the Garfield County real property records, Reception No. 542243. Additionally, on May 14, 2002, Declarant recorded an Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stirling Ranch, P.U.D. in Book 1354 on Page 572 of the Garfield County real property records, Reception No. 603327 ("First Stirling Ranch P.U.D. Covenants"). This Declaration is intended to supersede and replace both the Sun Mesa P.U.D. Covenants and the First Stirling Ranch P.U.D. Covenants, both of which documents shall be deemed null and void upon the recordation of this Declaration.

D. By virtue of their signatures below, Rebecca Stirling (owner of Lot 22, Stirling Ranch P.U.D.), Avigale Stirling Mcloughlin (owner of Lot 16, Stirling Ranch P.U.D.), Ariana M. Stirling (owner of Lot 21, Stirling Ranch P.U.D.), and Stirling Properties, LLC (owner of Lot 10, Stirling Ranch P.U.D.) authorize Declarant to fully include their properties within the Planned Community described herein. Likewise, Stirling Properties, LLC and Alpine Bank which, as of the date of this Declaration hold security interests in various portions of the Property, consent to this Declaration and hereby authorize the real property encumbered by said security interests to be fully included within the Planned Community described in this Declaration according to the terms of this Declaration.

**ARTICLE 1  
DECLARATION AND SUBMISSION**

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



EW 240912

After recording please return to:  
Mark E. Hamilton, Esq.  
CALOIA, HOUPY & HAMILTON, P.C.  
1204 Grand Avenue  
Glenwood Springs, CO 81601

807  
225/1  
(45)

Stirling Ranch P.U.D.

Declaration of Covenants, Conditions, Restrictions & Easements

Page 2

## ARTICLE 2 DEFINITIONS

The following words when used in this Declaration or any Supplemental or Amended Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

**Section 2.1** "Accessory Dwelling Unit" or "ADU" means a secondary residential unit on a Lot of up to 1500 square feet in size that may be leased separately from the main residence on the Lot but not sold separately from the main residence. ADU's may be either attached or detached from the main residence but must be constructed within the Building Envelope and subject to all building and construction standards set forth in this Declaration or Design Review Guidelines to be promulgated by Declarant or the Association.

**Section 2.2** "Articles" mean the Articles of Incorporation for the Association on file with the Colorado Secretary of State, and any amendments, which may be made to those Articles from time to time.

**Section 2.3** "Annual Assessment" is defined in Article 7 below.

**Section 2.4** "Assessments" means the Annual, Special, and/or Default Assessments levied pursuant to Article 7 below. Assessments are further defined as a Common Expense Liability as defined under the Act.

**Section 2.5** "Association" means the Stirling Ranch Property Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

**Section 2.6** "Association Documents" means this Declaration, the Articles of Incorporation, the Bylaws, and the Design Review Guidelines or any other procedures, rules, regulations, resolutions or policies adopted under such documents by the Association.

**Section 2.7** "Blanket Utility Easement Area" is defined in Section 4.4 below.

**Section 2.8** "Building Envelope" is defined in Section 12.6 below.

**Section 2.9** "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

**Section 2.10** "Common Areas" means all the real property and improvements thereon, if any, in which the Association owns or has an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis which are described in this Declaration and any supplements to this Declaration or which are designated on the Map and/or any Supplemental Map. Such interest may include, without limitation, estates in fee, for terms of years (i.e. leases), easements and licenses, including any interests that the Association may own or acquire in water rights, roads or mineral rights. Common Areas are further defined as Common Elements under the Act.

**Section 2.11** "Common Expenses" means: (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (ii) all other expenses of administering, servicing, conserving, managing, improving, maintaining, repairing, or replacing the Common Area; (iii) all expenses to be incurred by the Association in fulfilling its obligations or functions under this Declaration; and (iv) insurance premiums for the insurance carried under Article 8.

**Section 2.12** "Declarant" means Stirling-Sun Mesa, Inc., a Colorado corporation and its successors and assigns. No party other than Stirling-Sun Mesa, Inc. shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real property records of Garfield County, Colorado a written assignment from Stirling-Sun Mesa, Inc. of all or a portion of such rights and privileges.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 3*

**Section 2.13** “*Declarant Control Period*” means the maximum period allowed by Section 38-33.3-303(5)(a)(I), C.R.S. (2001).

**Section 2.14** “*Declaration*” means and refers to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stirling Ranch as amended and supplemented from time to time.

**Section 2.15** “*Default Assessment*” is defined in Section 7.7 below.

**Section 2.16** “*Design Guidelines*” means the guidelines and rules published and amended and supplemented from time to time by the Design Review Board.

**Section 2.17** “*Design Review Board*” means and refers to the Design Review Board defined in and created pursuant to Article 12 below.

**Section 2.18** “*Development Rights and Special Declarant Rights*” is defined in Article 10 below.

**Section 2.19** “*Director*” means a member of the Executive Board.

**Section 2.20** “*Equestrian Facilities*” is defined in Section 6.5 below.

**Section 2.21** “*Executive Board*” means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

**Section 2.22** “*Expansion Property*” is described in Section 10.2 below.

**Section 2.23** “*Function*” means any activity, function or service required or permitted under this Declaration to be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

**Section 2.24** “*Stirling Ranch*” means the planned community created by this Declaration, consisting of the Property, the Lots, the Common Areas, and any other improvements constructed on the Property and as shown on the Maps and any Supplemental Maps.

**Section 2.25** “*Lot*” shall have the same meaning as “*Unit*” as defined in Section 2.41, below.

**Section 2.26** “*Manager*” shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive Board may authorize from time to time.

**Section 2.27** “*Map*” means the Final Plat of Stirling Ranch P.U.D., which Final Plat was filed for record in the real property records of Garfield County, Colorado, on the 14th day of May, 2002, Reception No. 603325 and all supplements and amendments thereto, as well as any other documents defined as a “*map*” or a “*plat*” under the Act.

**Section 2.28** “*Member*” shall mean every person or entity who holds membership in the Association.

**Section 2.29** “*Owner*” means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, and “*Owner*” also includes the purchaser under a contract for deed covering a Lot, but excludes those having such interest in a Lot merely as security for the performance of an obligation, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 4*

**Section 2.30** “*Person*” means a natural person, a corporation, a partnership, a trustee or any other legal entity.

**Section 2.31** “*Property*” means and refers to that certain real property described on the Final Plat for Stirling Ranch P.U.D., which Final Plat was filed for record in the real property records of Garfield County, Colorado, on the 14th day of May, 2002, Reception No. 603325 and all supplements and amendments thereto.

**Section 2.32** “*PUD Agreement*” means that certain Stirling Ranch P.U.D. Improvements Agreement dated May 13, 2002 between Declarant and the Board of County Commissioners of Garfield County, Colorado, which was filed for record in the real property records of Garfield County, Colorado, on the 14th day of May, 2002, in Book 1354 at Page 662, Reception No. 603326.

**Section 2.33** “*Roads*” means all roads within the Property as designated on the Map and any Supplemental Map.

**Section 2.34** “*Sharing Ratio*” means the allocation of Assessments to which an Owner’s Lot is obligated. The formula for the Sharing Ratio is an equal allocation among all of the residential Lots in Stirling Ranch. The total number of residential Lots is currently twenty-seven (27), so the Sharing Ratio for each residential Lot is currently 1/27<sup>th</sup>. The denominator of this ratio may change if Declarant adds or subtracts residential Lots from Stirling Ranch as set forth in these Covenants. For example, if Declarant exercises its reserved right to further subdivide Lot 28 into more residential Lots (as more fully described below in Article 10, Section 10.1.3), the denominator of the Sharing Ratio will be increased by the number of new Lots thereby created.

**Section 2.35** “*Special Assessment*” is defined in Section 7.1 below.

**Section 2.36** “*Successor Declarant*” means any party or entity to whom Declarant specifically assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant’s rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

**Section 2.37** “*Supplemental Declaration*” means an instrument which subjects any part of the Expansion Property to this Declaration, as more fully provided in Article 10 below.

**Section 2.38** “*Supplemental Map*” means a supplement to the common interest community Map which may depict a part of the Expansion Property becoming subject to this Declaration through a Supplemental Declaration, as more fully provided in Article 11 below.

**Section 2.39** “*Trail Easement*” is defined in Section 4.5 below.

**Section 2.40** “*Trail Facilities*” is defined in Section 6.4 below.

**Section 2.41** “*Unit*” means the fee simple interest in and to any subdivided parcel of real property subject to this Declaration. A “Unit” shall also mean a denoted “Lot” as depicted on the Common Interest Community Map and legally described and identified thereon, which is subject to individual legal ownership by an Owner. In this Declaration, and on the Map, and in any legal description of separate ownership of property, the terms “Unit” and “Lot” may be used interchangeably.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 5*

**ARTICLE 3  
NAME, UNITS, LOTS, COMMON AREAS**

**Section 3.1 Name.** The name of the common interest community created by this Declaration is "Stirling Ranch." Stirling Ranch is a Planned Community pursuant to the Act.

**Section 3.2 Association.** The name of the Association is Stirling Ranch Property Owners Association, Inc. Declarant has caused to be incorporated under the laws of the State of Colorado the Association as a non-profit corporation with the purpose of exercising the Functions as herein set forth.

**Section 3.3 Units Devoted as "Lots."** Declarant has divided the Property into a Planned Community by creating units that are identified on the Map and throughout this Declaration as a Lot.

**Section 3.4 Number of Lots.** The initial number of Lots to be developed on the Property is twenty-eight (28). Declarant reserves the right for itself and any Successor Declarant to expand the Property to include up to a total of forty (40) Lots, and to expand the Common Areas.

**Section 3.5 Identification of Lots.** The identification number of each Lot is shown on the Map or supplemental map that contains the Lot.

**Section 3.6 Description of Lots.**

**3.6.1** The separate physical portions of the Planned Community, each of which is designated for separate ownership is a "Unit" and each is identified on the Map or supplement thereto as a particularly enumerated "Lot." Each Lot shall be inseparable and all Lots, except for Lot 28 which may be developed for commercial/recreational purposes, may only be developed for residential purposes in accordance with the restrictions applicable to a particular Lot contained in this Declaration, any supplements to this Declaration, the Map, any Supplemental Map, and in the Garfield County planning and zoning regulations.

**3.6.2** Any contract of sale, deed, lease, mortgage, deed of trust, will or other instrument affecting a Lot may describe it as:

Lot \_\_\_\_, Stirling Ranch P.U.D, County of Garfield, State of Colorado, according to the Map thereof recorded May 14, 2002, Reception No. 603325, and the Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stirling Ranch recorded on May \_\_\_\_, 2003 at Reception Number \_\_\_\_\_, as supplemented, in the Office of the Clerk and Recorder of Garfield County, Colorado (with the appropriate information inserted in place of the blanks set forth above).

Any part of the Expansion Property shall be referred to by the lot number and plat map for such property in the same manner as set forth above for lots within the Stirling Ranch P.U.D. Any additional residential lots created by subdivision of Lot 28 shall be described by reference to any new final plat relating to a resubdivision of Lot 28.

**3.6.3** Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed. The Common Areas shall not be assessed separately but shall be assessed with each residential Lot as provided pursuant to Colorado Revised Statutes Sections 39-1-103(10) and 38-33.3-105(2).

**3.6.4** Title to a Lot may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which he or she owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Lot. The parties,

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 6*

if more than one, having the ownership of a Lot shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

**Section 3.7** *No Partition of Common Areas.* No Owner of a Lot shall be entitled to bring any action for partition or division of the Common Areas.

#### ARTICLE 4 EASEMENTS AND RESERVATIONS BY DECLARANT

**Section 4.1** *Owners' Easement of Enjoyment.* Every Owner has a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot. Certain third persons may also have access to the Common Areas as may be set forth in the Association Rules. Every Owner shall have a right of access to and from his Lot. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Lots.

**Section 4.2** *Recorded Easements.* The Property shall be subject to all easements, licenses, covenants and restrictions as shown on any recorded map or plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements and reservations set forth in this Declaration, any supplements to this Declaration, the Map and any Supplemental Map. No Owner may erect any structure of any type whatsoever in any designated easement area, nor may an Owner use the surface of any such easement area for any private use, other than landscaping which will not interfere with the use of said easement by the persons or entities for whose benefit the easement was created or reserved and which receives the prior written approval of the Design Review Board.

**Section 4.3** *Declarant's Rights Incident to Construction.* Declarant, for itself and its successors and specific assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Areas, together with the right to store materials on the Common Areas, to build and maintain temporary walls, and to make such other use of the Common Areas as may be reasonably necessary or incident to any construction of improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to Stirling Ranch by the Unit Owners.

**Section 4.4** *Blanket Utility Easements.* Declarant hereby grants, reserves and declares a perpetual non-exclusive easement and perpetual right of ingress and egress over, under, upon, above, across and through all of Property, excepting only those portions lying within the Building Envelopes (the "Blanket Utility Easement"), for the benefit of Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by or under common control with Declarant), Declarant's successors and specific assigns, the Association and its successors and assigns, and any public or quasi-public utility or governmental or quasi-governmental agency, authority or entity to which Declarant may grant, delegate or dedicate all or any portion of its rights hereunder for the purposes of: (i) construction, operation, maintenance, repair and/or replacement (and access to said facilities for such purposes) of water, gas, electric, irrigation, telephone, cable television and/or other utility systems and drainage systems, including, without limitation, underground utility lines, above-ground utility lines, meter boxes, vaults, transformers, wells, pipelines, pump stations and other facilities related to the provision of any of such utility services, and drainage facilities and ditches; (ii) the delivery and drainage of water, and (iii) the ingress and egress of construction and maintenance vehicles and equipment, whether or not relating to the utilities and facilities described herein; provided, however, that no such use of the Blanket Utility Easement shall be exercised in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Lots or Stirling Ranch by the Owners.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 7*

The grant, reservation and declaration of this Blanket Utility Easement shall not obligate Declarant to construct any or all of the aforementioned utilities, nor is this easement limited to utilities that benefit one or more of the Lots.

**Section 4.5 Trail Easements.** Declarant hereby grants, reserves and declares a perpetual non-exclusive easement and right-of-way over, under, upon, above, across and through those portions of the Property designated on the Map or any Supplemental Map as "Trail Easement", for the benefit of the Association and its successors and assigns, the Declarant and its successors and assigns, the Owners, and any governmental or quasi-governmental agency, authority or entity to which the Association may grant, delegate or dedicate all or any portion of its rights hereunder, for the purposes of construction, operation, maintenance, repair and/or replacement of equestrian, hiking, biking or cross-country ski trail facilities within the Trail Easement area. Such easement shall be twenty feet (20') in width and extend ten (10) feet on either side of the centerline of the easement shown on the Map. The grant, reservation and declaration of the Trail Easement described herein shall not obligate Declarant to construct any or all of the aforementioned facilities. The Trail Easement and any trails constructed thereon shall be deemed Common Areas.

**Section 4.6 Irrigation Ditch Easements.** Declarant hereby grants, reserves and declares perpetual non-exclusive easements and perpetual rights of ingress and egress over, under, upon, above, across and through those portions of the Property traversed by the Irrigation Ditch Easements as shown on the Map or any Supplemental Map, as the same may be relocated from time to time, or buried in underground pipelines, for the benefit of Declarant, Declarant's successors and specific assigns, to which Declarant may grant, delegate or dedicate all or any portion of its rights hereunder for the purposes of construction, operation, maintenance, repair and/or replacement of the irrigation system that serves the Property. Irrigation Ditch Easements are further addressed below in Section 12.3.8.

**Section 4.7 Irrigation and Farming Easements.** Declarant reserves and declares a perpetual non-exclusive easement and perpetual right of ingress and egress over, under, upon, above, across and/or through those portions of Lot 24, Stirling Ranch P.U.D., that have been historically irrigated. Declarant, its successors or assigns, shall have a right of access to these portions of Lot 24 for continued irrigation of this areas, to raise and harvest crops (including hay or alfalfa), and otherwise to continue the historical agricultural activities on Lot 22. The Association shall also have the right to access Lots 21, 22 and 23 for the purpose of delivering irrigation water to historically irrigated lands located on the Common Areas, on Lots 21, 22, and 23, or anywhere else within the Property, as otherwise set forth below in Section 12.3.8.

**Section 4.8 Reservation for Expansion.** Declarant hereby reserves for itself and the Association and/or for Owners in all future phases of Stirling Ranch an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress from the Expansion Property, and other properties abutting and contiguous to the Property and the Expansion Property, and for use of the Common Areas as may be reasonably necessary or incident to the construction of improvements on the Lots or other improvements on the Property or the Expansion Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to Stirling Ranch by the Owners. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the Office of the Clerk and Recorder of Garfield County, Colorado.

**Section 4.9 General Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and Functions which the Association is obligated or permitted to perform pursuant to the Association Documents.

**Section 4.10 Attorney-in-Fact.** Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Lot, does irrevocably constitute and appoint the Association and/or Declarant with full power

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 8*

of substitution in the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Article and this Declaration generally, specifically including Declarant's reserved right to use all existing easements within the Property or to create, grant, use and/or replat and relocate additional or existing easements across any portion of the Property except within the Building Envelope on each Lot (as shown on the Final Plat or on a separate map to be prepared by Declarant). Additionally, and without limiting the generality of the foregoing, the Association and/or Declarant shall have the right at all times as attorney-in-fact for the Owners and each of them to: (1) enter into amendments and/or modifications of the PUD Agreement, the Map, and/or other governing documents for the Stirling Ranch P.U.D. in the sole and absolute discretion of the Association and/or the Declarant consistent with the Act and this Declaration, and any and all such amendments and/or modifications shall be binding upon the Property and all Owners; and (2) Declarant and/or the Association shall be authorized to request, pursue and finalize all necessary approvals from Garfield County to change the zoning of any part of Lot 28 from C/R (Commercial/Recreational) to R/SF (Residential/Single Family) or a combination thereof, to remove Lot 28 from the Common Areas associated with the Stirling Ranch P.U.D. pursuant to Section 38-33.3-312 of the Act, to reconvey or otherwise confirm title to part or all of Lot 28 in the Declarant's name, and to replat and further subdivide all or part of Lot 28 into residential Lots containing up to six (6) additional residential units and/or a manager's quarters. Any new residential Lots created from property that now comprises Lot 28 may be developed and sold by Declarant. This power of attorney is specifically intended to allow the Declarant to vote the Lot Owners' interests with regard to reconveyance, rezoning, further subdivision, development and/or sale of any part of Lot 28 pursuant to COLO. REV. STAT. § 38-33.3-312.

**Section 4.11** *Delegation of Use.* Any Owner may delegate his right of use and enjoyment of the Common Areas to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

**Section 4.12** *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

**Section 4.13** *Easements for Encroachments.* To the extent that any improvement constructed within the Common Areas (including, without limitation, any portion of the Roads) inadvertently encroaches on any Lot, either currently existing or as a result of any addition or improvement pursuant to this Declaration, a valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any such improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of such rebuilt improvements shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

**Section 4.14** *Declarant's Right of Assignment.* Declarant reserves the right to assign any or all of its rights, obligations or interest as Declarant by recording an assignment or deed of record executed by both Declarant and the transferee or assignee in the Office of the Clerk and Recorder of Garfield County, Colorado designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

**Section 4.15** *Reserved Rights of Correction and Relocation.* Declarant, for itself and its successors, assigns, and/or designees and the Association hereby reserves the right from time to time, without the consent of any Owner being required, to amend the Map and any Supplemental Map to conform the Map to the actual location of any of the constructed improvements including, without limitation, Common Areas, Roads, ditches, and utilities, and to establish, vacate and relocate minor deviations or errors therein.



*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 9*

**Section 4.16 No Dedication to the Public.** Nothing in this Declaration or the other Association Documents will be construed as a dedication to public use, or a grant to any governmental or quasi-governmental authority or utility, or an assumption of responsibility for the maintenance of any Common Areas by such authority or utility, absent an express written agreement to that effect.

**Section 4.17 Reserved Rights Regarding Irrigation Ditches.** Declarant, for itself and its successors, assigns, and/or designees hereby reserves the right, without the consent of any Owner being required, to allocate interests in the historical irrigation ditch water rights among the Association and Declarant, its successors, assigns and/or designees. As set forth below in Section 12.3.8, it is contemplated that historical irrigation water rights will continue to be used for irrigation of historically irrigated lands within Common Areas and upon certain individual lots within the development.

**Section 4.18 Common Driveway Easements.** As set forth on the Map for Stirling Ranch, certain lots will have shared driveways. Declarant hereby dedicates, establishes and grants to the following respective Lot owners, and to their respective successors and assigns forever in the ownership of said Lots, a perpetual, reciprocal, non-exclusive easement and right of way over, along, upon, across and beneath Common Driveway Easements. Said Easements will be depicted on separate maps to be given to the initial purchaser of each Lot by Declarant. Specifically, Lots 1 and 2 will share part of a driveway access; Lots 3, 4 and 5 will share part of a driveway access (and Lots 4 and 5 share an additional portion beyond the part to be used by Lot 3); Lots 6, 7, 8 and 9 will share part of a driveway access (and Lots 6 & 9, and 7 & 8, respectively, will share additional portions of driveway area beyond the part of the shared driveway to be used by all four lots). In the future, if further subdivided into additional residential Lots, Lot 28 may also have shared driveway(s). Common Driveway Easements shall be further restricted and conditioned as follows:

**4.18.1** Each Common Driveway Easement shall be used exclusively for the construction, improvement, maintenance and snowplowing of a common driveway, and for ordinary vehicular and pedestrian access, ingress to and from the specific Lots burdened or benefited thereby, and for underground utilities serving any such Lots. No motor vehicles shall be parked at any time within Common Driveway Easement areas, and no portion of any Common Driveway Easement shall be blocked or obstructed in any manner other than when occasionally necessary for maintenance and repair.

**4.18.2** With respect to all Lots that are accessed via any portion of a Common Driveway Easement, the first Lot Owner ("First Owner" in this paragraph) that chooses to so do so shall have a right to construct an improved driveway within the Common Driveway Easement area (subject to Design Review Board approval). Said driveway shall be designed to accommodate drainage for the driveway itself and form adjacent lands, and shall be constructed in a good and workmanlike manner. If any underground utility lines are to be installed within the Common Driveway Easement area by the First Owner for the benefit of his or her Lot, such utilities shall be fully installed, inspected and approved by the Declarant or the Association before the driveway is completed.

**4.18.3** Except in circumstances where damage is caused by one Lot owner (in which case, said Lot owner shall be solely responsible for all repair costs), all costs of constructing, improving, maintaining, repairing or replacing improved driveways within Common Driveway Easements, and any common utilities, shall be shared pro rata by the Lots served thereby. The Lot owner performing the work may submit invoices for common driveway or utility expenses to other benefited Lot owners, which invoices shall be paid within the next thirty (30) days. Any past-due amounts shall accrue interest at the rate of eighteen (18%) per annum. In the event of non-payment, the paying Lot owner may request the Association to levy the amount due as a special assessment against the delinquent Lot owner's property as per Section 7.6 of this Declaration. The decision as to whether to levy an assessment shall rest solely within the Association's discretion. Any non-payment of any such special assessment shall result in a statutory lien pursuant to this Declaration and the Act which the Association may foreclose upon according to the Act in order to recover the amount properly due to the paying Lot owner. In the alternative, the

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 10*

paying Lot owner may bring suit directly against the non-paying benefited Lot owner in the Garfield County courts. In the event of such an action, the court shall have discretion to award the prevailing party reasonable costs and attorneys' fees.

**4.18.4** Each owner of each Lot burdened or benefited by a Common Driveway Easement shall be deemed to have agreed to indemnify, defend and hold harmless the owners of each of the other Lots which share said Common Driveway Easement from and against any and all claims, demands, causes of action, damages, losses, liabilities, costs and expenses of any kind or nature (including those involving death, personal injury or property damage) arising from or incurred by any person in any way in connection with the use or repair of said Common Driveway Easement by the indemnifying party or its family, guests, invitees, contractors, or agents.

**4.18.5** These restrictions and conditions shall be binding upon and inure to the benefit of, and otherwise run with title to, each Lot burdened or benefited by a Common Driveway Easement within Stirling Ranch.

## **ARTICLE 5 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 5.1** *Membership in Association.* Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The vote for such Lot shall be exercised by one person or alternate persons (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter.

**Section 5.2** *Transfer of Membership.* An Owner shall not transfer, pledge, encumber or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or mortgagee of his Lot.

**Section 5.3** *Executive Board.* The affairs of the Association shall be governed by an Executive Board, consisting of either three (3) or five (5) persons in accordance with the Bylaws. The Directors may be nonresidents of Colorado, but all Directors elected by the Members (as opposed to any Directors appointed by Declarant pursuant to Section 5.6 below) must be Owners of Lots.

**Section 5.4** *Voting Rights.* Each Lot shall entitle an Owner to one (1) vote for the purpose of all Association matters.

**Section 5.5** *Election of Directors.* The appointment and/or election of Directors and officers of the Association shall be governed by the Bylaws.

**Section 5.6** *Declarant Control.* Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent currently permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set forth in the Bylaws. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Garfield County, Colorado but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

**Section 5.7** *Compliance with Association Documents.* Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 11*

obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots and for the benefit of any Expansion Property.

**ARTICLE 6  
ASSOCIATION FUNCTIONS AND DUTIES**

**Section 6.1 Property Maintenance Function.** The Association shall provide for the care, operation, management, maintenance, improvement, repair and replacement of all Common Areas. Moreover, the Association may provide for the care and maintenance of other areas of the Property if the Executive Board, in its reasonable discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Lot or any improvements within Stirling Ranch. The Executive Board shall be the sole judge as to the appropriate maintenance, operation and management of the Common Areas and other areas of the Property consistent with intent of this Declaration. The Association may do all things that may be reasonably necessary or desirable to keep and maintain Stirling Ranch as a secure, attractive and desirable community. Included within this power shall be the right to hire a manager or other employees as necessary to manage the roads, water systems, ditches, trails, maintenance, and/or equestrian or other common facilities described in this Article 6, and/or to provide housing for such employees and their families within Stirling Ranch.

**Section 6.2 Road Function.**

**6.2.1** The Association shall maintain and keep the Roads in good repair, and the cost of such maintenance shall be funded as provided in Article 7. All Roads shall be deemed Common Areas. Maintenance shall include, but shall not be limited to, upkeep, surfacing, repair, expansion and replacement of the Roads (which shall include without limitation snow removal services). In the event the Association does not maintain or repair the Roads, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. The Association may contract for these services with any public or private entity. The main entrance into Stirling Ranch shall have a lockable gate. At all times, the Association shall provide all Owners, the Carbondale Rural Fire Protection District, and the Garfield County Sheriff's Department with any keys or codes necessary to unlock the main gate into the development. The costs of operating and maintaining the gate shall be assessed to the Owners as provided in Article 7.

**6.2.2** If the Executive Board deems it advisable, the Association may, at any time, enter into a written agreement to dedicate or convey the Roads to Garfield County. After any dedication made pursuant to this Section, and acceptance of such dedication by Garfield County, the County shall have responsibility for the maintenance and upkeep of the Roads.

**Section 6.3 Water Function.** The Association shall construct, operate, maintain repair and replace, as necessary, a water system for the delivery of potable water to each Lot as described more fully below in Section 12.3. All parts of the potable water system for the property, including without limitation all wells, storage tanks, pipelines, pumps, and associated facilities and distribution systems, shall be deemed as Common Areas. The Association shall also construct, operate, maintain, repair and replace a non-potable irrigation system (ditches and pipelines) which has historically served Open Space and parts of Lots 21, 22, 23, and 24 as more fully set forth in Section 12.3.8. The costs of operating and maintaining the water systems for the Property shall be assessed to the Owners as provided in Article 7.

**Section 6.4 Trails Function.** If the Executive Board deems it advisable, the Association may construct trail facilities, which may include, without limitation, pedestrian, equestrian, biking and skiing trails, walkways, pathways, benches, signage and other related facilities ("Trail Facilities") within the Trail Easement area. The cost of the construction of the Trail Facilities shall be funded by the Association as provided in Article 7. All Trail Facilities shall be deemed Common Areas. The Association shall maintain and keep the Trail Facilities in good repair, and the cost of such maintenance shall be funded as provided in Article 7. This maintenance shall

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 12*

include, but shall not be limited to, upkeep, repair, expansion and replacement of the Trail Facilities. The Association shall have no liability of any kind to any user of the Trail Facilities, including any Lot Owner, for any personal injury or property damage arising out of such user's use of the Trail Facilities. Usage of the Trail Facilities shall be limited to Owner and their guests only, except that the Association may lease the Trail Facilities to third parties from time to time so long as Owners' use of the Trail Facilities is not thereby unreasonably inhibited.

**Section 6.5 Equestrian Function.** The Declarant has constructed a community barn facility on Open Space north of Lot 22 for the benefit of all Lot Owners, guests and lessees. If the Executive Board deems it advisable, the Association may construct other equestrian facilities within Stirling Ranch, which may include without limitation pastures, stables, corrals, additional barns, caretaker units, and other related facilities ("Equestrian Facilities"). The cost of any such additional Equestrian Facilities shall be funded by the Association as provided in Article 7. All Equestrian Facilities shall be deemed Common Areas. The cost of leasing, insuring, operating, maintaining, repairing and replacing the Equestrian Facilities shall be allocated equally among all Lot Owners unless otherwise determined by the Association. The Declarant and the Association shall have no liability of any kind to any user of the Equestrian Facilities, including any Lot Owner, for any personal injury or property damage arising out of such user's use of the Equestrian Facilities. The Association may promulgate rules and regulations regarding the use of the Equestrian Facilities, including the costs to be paid by users per stall or paddock, and the allocation of hay cut within Stirling Ranch. Any improvements to the Equestrian Facilities in existence as of the date of this Declaration, such as additional paddocks or stalls, or restroom facilities, shall be funded by the Association as a Special Assessment in accordance with Section 7.6, below.

**Section 6.6 Spa Function.** If for any reason Declarant elects not to rezone and replat Lot 28 in the manner described above in Section 4.10 and below in Article 10, and the land use approvals for Stirling Ranch continue to allow for commercial/recreational (C/R) use of Lot 28, a community spa facility may be built by the Association upon Lot 28 ("Spa Facilities"). In such event, Lot 28 and the spa facility to be located thereon would constitute Common Areas and Common Elements that would be owned by the Association for the exclusive benefit of Lot Owners and authorized guests or lessees. In such event, the Association could promulgate additional rules and regulations regarding the use of the Spa Facilities from time to time. Such Facilities may be further limited as per the Zone District Text approved by Garfield County for the Stirling Ranch P.U.D. and/or the terms and conditions set forth in the various water court decrees and well permits associated with Stirling Ranch.

**Section 6.7 Animal Control Function.** The Association may provide for regulations, facilities, personnel and funds to enforce animal control or exclude animals from all or any portion of Stirling Ranch and may cooperate with the appropriate governmental body regarding enforcement of animal control regulations.

**Section 6.8 Exterior Maintenance Function.**

**6.8.1** Subject to Article 12, each Owner shall be solely responsible for all landscaping, maintenance and repair of his or her Lot and of the exterior and interior of his or her residence, including all fixtures and improvements and all utility lines and equipment located therein or in, on or upon his or her Lot and is required to maintain the Lot and any improvements located thereon in a condition of good order and repair. No Owner shall unreasonably damage the value of other Lots by the poor upkeep of such Owner's Lot or any structures located on the Lot.

**6.8.2** Lot Owners shall be individually responsible for maintenance and repairs of all utility service lines, connections, facilities and related equipment providing service to such Owner's Lot and the residence and other buildings and improvements constructed upon such Lot, with such responsibility to begin at the point where a utility provider ceases responsibility for maintenance and repair for a particular utility. As to the domestic water system, the Association's responsibility for maintenance terminates at the curb stop. The Owner is responsible for all other water installations, repairs and maintenance on the Lot as set forth in this Declaration and in the Design Review Guidelines to be promulgated by Declarant or the Association. As to electricity, the utility

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 13*

provider's responsibility for maintenance terminates at the transformer nearest to the driveway entrance for each Lot. As to telephone service, the utility provider's responsibility for maintenance terminates at the pedestal nearest to the driveway entrance for each Lot. The responsibility of an Owner for repair and maintenance shall include those portions of said Owner's Lot, other Lots, platted easements, and Roads that are crossed by such a utility service line or other improvement. All such expenses and liabilities shall be borne solely by the Owner of such Lot, who shall have a perpetual easement in and to that part of the Property lying outside of such Owner's Lot for purposes of maintenance, repair and inspection. Each Owner shall use the utility service easement provided herein in a reasonable manner and shall promptly restore the surface overlying such easements when maintaining or repairing a utility service line or other improvement.

**6.8.3** If any Owner fails to maintain its Lot or related improvements or property or fails to perform any acts of maintenance or repair required under this Declaration, the Association may provide, by the affirmative vote of a majority of the members of the Design Review Board or the Executive Board, exterior maintenance and repair upon such property after thirty (30) days' notice of such failure to the Owner of such Lot. In addition, the Association may, without notice, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any other property. The cost of such exterior maintenance and repairs of a Lot shall be assessed against the Owner of such Lot and shall be a lien against such Lot as well as a personal obligation of the Owner pursuant to Article 7. For the purpose of performing the exterior maintenance authorized by this Section, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner, to enter upon such Lot during reasonable hours on any day. The Association or the Design Review Board or their designees are hereby granted an irrevocable license over all property in Stirling Ranch to inspect (in a reasonable manner) property within Stirling Ranch in order to determine whether any maintenance or repair is necessary under this Section.

**6.8.4** Neither Declarant, the Association, nor any of their respective directors, members, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any Lot or improvements or portion thereof or to repair or maintain the same. Declarant, the Association or any member of the general public, firm or corporation undertaking such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Lot or improvements or portion thereof.

**Section 6.9 Right to Make Rules and Regulations.** The Association shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable within Stirling Ranch with respect to any Common Areas, and to implement the provisions of this Declaration; to promote the general health, safety and welfare of persons residing, visiting and doing business within Stirling Ranch; and to protect and preserve property and property rights. The Executive Board may, by a majority of the voting Directors, make and amend reasonable rules and regulations governing the use and operation of the Common Areas. All rules and regulations shall comply with the Association Documents, and supplements thereto. The rules and regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate between Owners, lessees, guests or members of the general public. In addition, such rules and regulations shall, when applied to each of the Lots considering the use of such Lot, be equitable and reasonable as applied to the Lot with respect to the use thereof. The Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from Common Areas or from enjoyment of any Functions, or otherwise. Each Owner, lessee, guest and member of the general public shall be obligated to and shall comply with and abide by such rules and regulations and pay such fines or penalties upon failure to comply with or abide by such rules and regulations and such unpaid fines and penalties shall be enforceable in accordance with Article 7.

**Section 6.10 Taxes.** The Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with any Common Areas.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 14*

**Section 6.11 Right to Dispose of Common Areas; Third Party Rights in Common Areas.** Subject to the provisions of the Act, the Association and the Declarant shall have the full power and authority to lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Areas, provided that there shall be no further subdivision of Common Areas into additional Lots (except in the event that Declarant elects to rezone and further subdivide all or part of Lot 28, as described below in Article 10). The Association shall be entitled to contract with third parties, including, without limitation, other residential or recreational associations or individuals, allowing such persons the use and enjoyment of all or a portion of the Common Areas under such terms and for such charges as may be acceptable to the Executive Board.

**Section 6.12 Governmental Successor.** Subject to applicable provisions of the Act, any Common Area and any Function may be turned over to a governmental or quasi-governmental entity which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate.

**Section 6.13 Records.** The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 38-33.3-316(8) of the Act concerning statements of unpaid assessments. All financial and other records shall be made available for examination by any Owner or such Owner's authorized agents during normal business hours and under other reasonable circumstances. The Association shall make available for inspection by Owners, upon request, during normal business hours or under other reasonable circumstances current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

**Section 6.14 Implied Rights of the Association.** The Association shall give and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

6.14.1 adopt and amend the bylaws and rules and regulations of the Association;

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

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

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

6.14.5 establish the Design Review Board as provided in Article 11 and regulate the construction, reconstruction and alteration of any improvements located or to be located on the Property;

6.14.6 make contracts and incur liabilities;

6.14.7 regulate the use, improvement, maintenance, repair, replacement and modification of the Common Areas;

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 15*

6.14.8 cause additional improvements to be made as part of the Common Areas, including the construction of any capital improvement or asset, in whole or in part, for the benefit of some or all of the Lots, lessees, guests and members of the general public, including without limitation, Roads, access roads, Trail Facilities, Equestrian Facilities, paths, walkways, and sidewalks; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds, lakes, ditches, irrigation system and water tanks; drainage facilities; monuments; storage facilities for supplies and equipment; earth walls, retaining walls and other supports; lighting; and signage; and recreational facilities, such as a pool or tennis courts;

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

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

6.14.11 impose and receive charges for late payments of Assessments, recover reasonable attorney's fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Association Documents;

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

6.14.13 provide for the indemnification of the Association's officers and Directors and maintain Directors' and officers' liability insurance;

6.14.14 assign its right to future income, including without limitation, its right to receive Assessments;

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

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

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

**Section 6.15 Association Documents.** Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents. The obligations, burdens and benefits of membership in the Association touch and concern the Property and are, and shall be, covenants running with each Lot for the benefit of all other Lots and the Common Areas.

**Section 6.16 Indemnification.** The Association shall be obligated to and shall indemnify and defend Declarant and hold it harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements, arising with respect to any operations of the Association or any Common Areas.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 16*

**Section 6.17 Owner's Negligence.** In the event that the need for maintenance, repair or replacement of all or any portion of the Common Areas is caused through or by the negligent or willful act or omission of an Owner or an Owner's guest or lessee, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner; and, if an Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses shall automatically become a default Assessment determined and levied against such Lot, enforceable by the Association in accordance with Sections 7.7, 7.8 and 7.9 below.

**Section 6.18 Enforcement of Association Documents.** The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with the Association Rules and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

**Section 6.19 Cooperation with Other Associations.** The Association may contract or cooperate with other homeowners' associations or entities as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their lessees and guests. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

**Section 6.20 Limitation of Liability of Association.** NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 8, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR OF THE COMMON AREA, CAUSED BY ANY LATENT CONDITION OF THE COMMON AREAS TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

**Section 6.21 Association Standard of Care.** The duty of care, which the Association owes to the Owners, is that of a landowner to a licensee, notwithstanding the interest, which the Owners hold in the Common Areas through their membership in the Association.

## ARTICLE 7 ASSESSMENTS

**Section 7.1 Obligation.** Each Lot Owner, including Declarant, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (i) the annual assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Areas and to perform the Functions of the Association ("Annual Assessments") according to the Sharing Ratio; (ii) special assessments for capital improvements and other purposes as stated in this Declaration ("Special Assessments"); and (iii) default assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents ("Default Assessments"). No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Areas or the facilities contained in the Common Areas or abandoning or leasing his Lot.

**Section 7.2 Purpose of Assessments.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of Stirling Ranch, for the improvement and maintenance of the Common Areas and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.



*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 17*

**Section 7.3 Budget.** Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting Owners representing more than sixty-seven percent (67%) of all votes entitled to be cast on Association matters reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified in accordance with this Section must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote as provided herein no less frequently than annually. The Executive Board shall levy and assess the Association's Annual Assessments in accordance with the annual budget.

**Section 7.4 Annual Assessments.** Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 7.3 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Areas; expenses of management; taxes and special governmental assessments pertaining to the Common Areas and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping and care of grounds within the Common Area; routine repairs and renovations within the Common Areas; wages; common water and utility charges for the Common Areas; charges for construction, operation, maintenance, repair and replacement of a potable water system, Roads, and irrigation systems; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance repairs, and replacement of improvements within the Common Areas on a periodic basis, as needed.

Annual Assessments shall be payable on a prorated basis each year in advance and shall be due on the first day of each month, calendar quarter or year, as determined by the Executive Board. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year. In the alternative, the Executive Board may elect to allocate any such excess Assessments to an Association working capital fund or to an Association reserve fund.

**Section 7.5 Apportionment of Annual Assessments.** Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Lots on the basis of the Sharing Ratios in effect on the date of assessment, subject to the following provisions. Notwithstanding any terms in this Section to the contrary, the Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 8, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 8.

**Section 7.6 Special Assessments.** In addition to the Annual Assessments authorized above, the Executive Board may at any time and from time to time determine, levy and assess in any fiscal year (without the vote of the Members of the Association, except as provided in the Act and in this Section below) a Special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine). Any amounts determined, levied and assessed pursuant to this Section shall be assessed to the Lots in the same percentages as are applicable to Annual Assessments. Special Assessments shall be based on a budget adopted in accordance with Section 7.3 provided that, if necessary, the Association may adopt a new budget pursuant to Section 7.3 prior to levying a Special Assessment. Such Special Assessment(s) shall be due and payable as determined by the Executive Board.

**Section 7.7 Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 18*

by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

**Section 7.8** *Effect of Nonpayment; Assessment Lien.* Any Assessment installment, whether pertaining to any Annual, Special, Default or Real Estate Transfer Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

**7.8.1** Assess a late charge for each delinquency in such amount as the Association deems appropriate;

**7.8.2** Assess an interest charge from the date of delinquency at the yearly rate of eighteen percent (18%) per annum;

**7.8.3** Suspend the voting rights of the Owner during any period of delinquency;

**7.8.4** Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

**7.8.5** Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

**7.8.6** Proceed with lien foreclosure as set forth in more detail below.

Assessments chargeable to any Lot shall constitute a lien on such Lot. The Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien.

The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

The lien of the Assessments will be superior to and prior to any homestead exemption provided now or in the future by the law of the State of Colorado, and to all other liens and encumbrances except liens and encumbrances recorded before the date of the recording of this Declaration, and liens for governmental assessments or charges imposed against a Lot by a Colorado governmental or political subdivision or special taxing district or any other liens made superior by statute.

**Section 7.9** *Personal Obligation.* The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or any part of the Common Area. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 19*

**Section 7.10 Successor's Liability for Assessments.** The provisions of the Act shall govern and control (a) the obligations of successors to the fee simple title of a Lot on which Assessments are delinquent and (b) the subordination by the lien of the Assessments provided for in this Declaration. Notwithstanding the foregoing or any contrary provision herein, the lien of the Assessments shall represent a prior and senior lien and shall enjoy priority over any mortgage, deed of trust or other security instrument recorded subsequent to the recording of the Declaration.

**Section 7.11 Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) calendar days' written request to the Manager or the Association's registered agent, any Owner or prospective purchaser of a Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) calendar days, the Association shall have no right to assert a lien upon the Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

## ARTICLE 8 INSURANCE

**Section 8.1 General Insurance Provisions.** The Association shall maintain, to the extent reasonably available:

**8.1.1** Property insurance on the Common Areas for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less reasonable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and

**8.1.2** General liability insurance, including, without limitation, medical payments insurance, insuring the Association, and its officers, members of the Executive Board, and any Managing Agent, and the employees and agents of the Association and the Managing Agent against liability for death, bodily injury, slander, false arrest, invasion of privacy and property damage arising out of or in connection with the ownership, existence, management, maintenance and use of the Common Areas and other areas, if any, under the supervision of the Executive Board. Limits of liability will be determined by the Executive Board and will be at least \$2,000,000.00 per person for any injuries or death sustained by any person in any single occurrence, and at least \$2,000,000.00 for property damage resulting from each occurrence. The Executive Board and the Design Review Board, and their respective agents, officers and employees shall be named as additional insureds. The Declarant shall also be named as an additional insured as its interests may appear. The Owners shall also be named as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Common Areas.

**8.1.3** The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Lots, or insurance covering the acts or omissions of officers, directors, employees or agents of the Association, contractual liability insurance, or other insurance that the Association is not obligated to carry to protect the Association or the Owners.

**Section 8.2 Policy Provisions.** Insurance policies carried pursuant to Section 8.1. must, to the extent available, provide that:

**8.2.1** Each Owner is an insured person under the policy with respect to liability arising out of

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 20*

such Owner's membership in the Association;

**8.2.2** The insurer waives its rights to subrogation under the policy against any Owner or member of his/her household, the Association, or any person claiming by, through, or under any Owner or other director, agent, or employee of the Association;

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

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

**Section 8.3 Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 8.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners as their interests may appear. Subject to the provisions of Section 38-33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the planned community created by this Declaration is terminated.

**Section 8.4 Association Policies.** The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

**Section 8.5 Insurer Obligation.** To the extent the following is available, an insurer that has issued an insurance policy for the insurance described in Section 8.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner. To the extent reasonably available, unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

**Section 8.6 Repair and Replacement.**

**8.6.1** Any portion of the Common Areas for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

**8.6.1.1** The regime created by this Declaration is terminated;

**8.6.1.2** Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

**8.6.1.3** Ninety percent of the Owners vote not to rebuild; or

**8.6.1.4** Prior to the conveyance of any Lot to a person other than Declarant, the party holding a deed of trust or mortgage on the damaged portion of the Common Areas rightfully demands all or a substantial part of the insurance proceeds.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 21*

**8.6.2** The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Area is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of Stirling Ranch, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners, as their interests may appear in proportion to the Common Expense liabilities of all the Lots.

**Section 8.7** *Common Expenses.* Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

**Section 8.9** *Worker's Compensation Insurance.* The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

**Section 8.10** *Insurance Obtained by Owners.* Insurance coverage on the furnishings and other items of personal property belonging to a Lot Owner or occupant, public liability insurance coverage on each Lot, and casualty insurance coverage upon the improvements constructed upon each Lot, shall be the responsibility of the Owner or occupant of the Lot.

## ARTICLE 9 MECHANICS' LIENS

**Section 9.1** *No Liability.* If any Owner shall cause any material to be furnished to his Lot or any labor to be performed therein or thereon, no Owner of any other Lot shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his or her Lot. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Areas or any Lot other than the Lot of such Owner with any mechanic's lien or other lien or encumbrance whatever. Notice is hereby given that the right and power to charge any lien or encumbrance of any kind against the Common Areas or against any Owner or any Owner's Lot for work done or materials furnished to any other Owner's Lot is hereby expressly denied.

**Section 9.2** *Indemnification.* If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Areas or against any other Owner's Lot or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

## ARTICLE 10 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

**Section 10.1** *Development Rights and Special Declarant Rights.* The Declarant reserves the following Development Rights and Special Declarant Rights:

**10.1.1** The right to add additional property to Stirling Ranch as more specifically set forth in Section 10.2 below;

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 22*

**10.1.2** The right to withdraw property from Stirling Ranch as more specifically set forth in Section 10.3 below;

**10.1.3** The right to relocate boundaries between adjoining Lots, enlarge Lots, enlarge the Common Areas, reduce or diminish the size of any Lot, reduce or diminish the size of areas of the Common Areas, subdivide Lots, create additional Lots, create Association Property, convert lots into Association Property and/or streets, and complete or make improvements generally and/or specifically, as the same may be indicated on the Map or any Supplemental Map or described in this Declaration or any Supplemental Declaration; Declarant shall have the specific right to change the zoning for all or any part of Lot 28 from C/R (Commercial/Recreational) to R/S (Residential Single Family) (or any combination of C/R and R/S zoning), to remove all or any part of Lot 28 from the Common Areas described upon the Map for Stirling Ranch, to reconvey title to Lot 28, or any part thereof, to the Declarant, to further subdivide Lot 28 into additional residential Lots, to include any and all such additional Lots as part of the Planned Community for Stirling Ranch, and to sell such new residential Lot. Declarant shall be entitled to represent and vote the interests of the Lot Owners and the Association to Garfield County and all other governing authorities regarding the rezoning or further subdivision of Lot 28 as per the attorney-in-fact relationship established by Section 4.10 of this Declaration.

**10.1.4** The right to exercise any rights reserved in this Declaration or allowed in the Act;

**10.1.5** The right to use, and to permit others to use, easements through the Common Areas as may be reasonably necessary for construction and for the purpose of discharging the Declarant's obligations under this Declaration;

**10.1.6** The right to appoint or remove any officer of the Association or any Director of the Executive Board during the Declarant Control Period;

**10.1.7** The right to amend the Declaration in connection with the exercise of any Development Right or Special Declarant Right;

**10.1.8** The right to amend the Map in connection with the exercise of any Development Right or Special Declarant Right;

**10.1.9** The right, but not the obligation, to construct additional improvements on Association Property at any time and from time to time for the improvement and enhancement thereof for the benefit of the Association and the Owners, or some of them;

**10.1.10** The right to complete improvements referred to in the PUD Agreement or required by any other subdivision improvements agreements that may be entered into by Declarant in connection with including the Expansion Property as part of the Property benefited and burdened by these Covenants, as such PUD agreement or subdivision improvements agreements may be amended from time to time;

**10.1.11** The right to construct, locate or operate, and to maintain upon, or remove from, any part of the Planned Community including Lots owned by Declarant and Common Areas, in the discretion of Declarant: sales offices, management offices, and/or construction offices (such offices shall be the personal property of the Declarant); signs identifying and advertising Stirling Ranch and the Lots contained therein; model residences; parking areas, facilities and lighting necessary or desirable to market Lots;

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 23*

**10.1.12** The right to attract, invite or bring prospective purchasers of Lots onto the Property at all times and to permit them to use and enjoy Common Areas;

**10.1.13** The right to merge or consolidate the Planned Community with another common interest community of the same form of ownership;

**10.1.14** The right, but not the obligation, to transfer additional real and personal property, and improvements thereon, to the Association from time to time in furtherance of this Declaration.

**10.1.15** The right to exercise any additional reserved right created by any other provision of this Declaration, to satisfy title insurance requirements, or to bring any provision of this Declaration into compliance with the Act or any other applicable federal or state statutes or regulations.

**10.1.16** The right to amend the water court decrees and well permits associated with Stirling Ranch as may be necessary to support to facilitate the exercise of any of Declarant's reserved rights.

***Section 10.2 Expansion Rights.***

**10.2.1** Declarant reserves the right for itself and any Successor Declarant to subject all or any part of the Expansion Property to the provisions of this Declaration and thereby expand the Property to include additional Lots without the consent or approval of the Owners, and to expand the Common Areas.

**10.2.2** To the fullest extent permitted by Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to Stirling Ranch and the provisions of this Declaration. In the event that Declarant elects to annex any such additional unspecified real estate, Declarant shall proceed in accordance with the following subsection 10.2.3.

**10.2.3** Such expansion may be accomplished by the filing for record by Declarant in the Office of the Clerk and Recorder of Garfield County, Colorado, of one or more Supplemental Declarations and, if the real property being made subject to this Declaration by such Supplemental Declaration has not been previously platted in a plat recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, of a Supplemental Map depicting such Expansion Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the Lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion determines. Declarant shall not be obligated to expand Stirling Ranch beyond the number of Lots initially submitted to this Declaration.

**10.2.4** Any new Lots (and/or any additional Lots created by rezoning and further subdivision of all or any part of Lot 28) shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon recording the Supplemental Declaration and, if necessary, the Supplemental Map(s) depicting the Expansion Property of public record in the Office of the Clerk and Recorder of Garfield County, Colorado. Upon the recording of such Supplemental Declaration and, if necessary, Supplemental Map, the Lots described therein shall be deemed to be governed in all respects by the provisions of this Declaration.

**10.2.5** It is contemplated that additional Lots may be committed to this Declaration, but Declarant and any Successor Declarant shall have no affirmative obligation to commit any additional Lots hereto. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 24*

provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to any Lots that are added to this Declaration in accordance with these provisions relating to enlargement thereof.

**10.2.6** Upon the inclusion of additional Lots under this Declaration, the Sharing Ratio applicable to a Lot shall automatically be reduced to a fraction, the numerator of which shall be one (1) and the denominator of which shall be equal to the total number of Lots then contained within Stirling Ranch. Such change in the Sharing Ratio appurtenant to a Lot shall be reflected and set forth in the Supplemental Declaration. The Supplemental Declaration may provide for a sub-association of owners within the annexed property described in the Supplemental Declaration and for the right of the sub-association to assess such owners for common expenses unique to those owners.

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

**Section 10.3** *Withdrawal Rights.* Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from Stirling Ranch and from the provisions of this Declaration any real property subject to this Declaration or subjected to this Declaration by a duly recorded Supplemental Declaration and, if necessary, Supplemental Map prior to the time of a sale of a Lot within that phase of the Property as described in this Declaration or in said Supplemental Declaration and, if necessary, Supplemental Map. Provided, however, that once a Lot has been conveyed to a Lot Owner other than the Declarant, that portion of the Property is no longer subject to this right of withdrawal. Likewise, once any part of the Property has been conveyed to the Association, that portion of the Property is no longer subject to this right of withdrawal, excepting however Lot 28 which the Declarant shall have the right to rezone, further subdivide, or withdraw.

**Section 10.4** *Rights Transferable/Rights Transferred.* Any Development Right or Special Declarant Right reserved in this Declaration, any Supplemental Declaration, or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the real property records of Garfield County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of this Declaration, any Supplemental Declaration, the Map, and Supplemental Map and the Act without the consent of the Association, any Lot Owner or any holders of Security Interests. The provisions of Section 38-33.3-304 of the Act shall apply to any transfer of special declarant rights.

**Section 10.5** *No Further Authorization Needed.* The consent of Owners shall not be required for exercise of any Development Rights or Special Declarant Right, and Declarant or its assignees may proceed without limitation at their sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined.

**Section 10.6** *Termination of Reserved Rights.* The Development Rights and Special Declarant Rights reserved to Declarant, for itself, its successors and assigns, shall expire on the earlier of twenty (20) years from the date of recording of this Declaration or such date as may be required by the Act, unless: (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by the Declarant; (ii) extended as allowed by law or; (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of Garfield County, Colorado.





*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 25*

**Section 10.7 Acceptance and Waiver of Rights re: Declarant's Reserved Rights.** Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in Stirling Ranch, acknowledges that the Owner has carefully reviewed and understands Declarant's reserved rights as set forth in this Article 10 or elsewhere in this Declaration or in any Supplemental Declaration, that the Owner accepts and acknowledges any potential impacts that the implementation of Declarant's reserved rights may have on the Owner's Lot, and expressly waives any rights the Owner may have to object or to interfere in any way with the exercise of such rights.

## ARTICLE 11 DESIGN GUIDELINES AND REVIEW BOARD

**Section 11.1 Design Review Board and Guidelines.** There is hereby established a Design Review Board (the "Design Review Board") that will be responsible for the promulgation, establishment, administration, and enforcement of Design Guidelines to facilitate the purpose and intent of this Declaration.

**Section 11.2 Purpose and General Authority.** The Design Review Board will review, study and either approve or reject proposed improvements on the Property, all in compliance with this Declaration and as further set forth in the Design Guidelines and such rules and regulations as the Design Review Board may establish from time to time to govern its proceedings. No improvement will be erected, placed, improved, reconstructed, replaced, repaired or otherwise altered, nor will any construction or reconstruction be commenced until plans for the improvements shall have been approved by the Design Review Board; provided, however, that improvements that are completely within a dwelling structure may be undertaken without such approval.

**Section 11.3 Board Discretion.** The Design Review Board will exercise its best judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the building site, height, grade and finished ground elevation, landscaping, and the schemes and aesthetic considerations set forth in the Design Guidelines and other Association Documents. The Design Review Board, in its sole discretion but in compliance with the other restrictions, covenants and easements to which the Property is subject, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. The approval by the Design Review Board of improvements on the Property shall carry no precedential weight when reviewing subsequent requests for approvals, and the Design Review Board shall not be required to approve requests for the same or similar improvements.

The Design Review Board may amend, repeal and augment the Design Guidelines from time to time, in the Design Review Board's sole discretion. The Design Guidelines will be binding on all Owners and other persons governed by this Declaration. Notwithstanding the foregoing, the Design Review Board is empowered in its discretion to grant variances from the requirements of the Design Guidelines if the Design Review Board determines that there will be no material adverse impact on other Lot Owners or the Association. If a variance is sought, the Design Review Board must mail written notice to all owners of Lots within 300 feet of the Lot for which the variance is sought no later than ten (10) days prior to meeting to consider the requested variance. No variance may be granted that conflicts with the P.U.D. Agreement, the terms of any Water Court Decrees confirming water rights or an augmentation plan for the development, the terms of any well permits issued by the Division of Water Resources for wells within the development, or any local, state or federal laws.

**Section 11.4 Design Review Board Membership.** The Design Review Board will be composed of three (3) or five (5) persons. The Design Review Board need not include any Member of the Association. All of the members of the Design Review Board will be appointed, removed and replaced by Declarant, in its sole discretion, until all the Lots comprising the Property are sold unless required otherwise by the Act, or such earlier time as Declarant may elect to voluntarily waive this right by notice to the Association, and at that time the Executive Board will succeed to Declarant's right to appoint, remove or replace the members of the Design Review Board.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 26*

***Section 11.5 Organization and Operation of Design Review Board.***

11.5.1 The term of office of each member of the Design Review Board, subject to Section 12.4, will be one (1) year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Design Review Board member die, retire or become incapacitated, or in the event of a temporary absence or resignation of a member, a successor may be appointed as provided below.

11.5.2 So long as Declarant appoints the Design Review Board, Declarant will appoint the chairman. At such time as the Design Review Board is appointed by the Executive Board, the chairman will be elected annually from among the members of the Design Review Board by a majority vote of such members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.

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

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

11.5.5 The Design Review Board may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Design Review Board may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Design Review Board.

***Section 11.6 Expenses.*** Except as provided in this Section below, all expenses of the Design Review Board will be paid by the Association and will constitute a Common Expense. The Design Review Board will have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Design Review Board from time to time, and such fees will be collected by the Design Review Board and remitted to the Association to help defray the expenses of the Design Review Board's operation. Further, the Design Review Board may retain the services of third party consultant(s) to assist the Design Review Board in reviewing a particular application. In such event, the Design Review Board may charge the applicant for the professional fees incurred in retaining such consultant(s).

***Section 11.7 Other Requirements.*** Compliance with the Association's design review process is not a substitute for compliance with State of Colorado and Garfield County building, zoning, subdivision and land use regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. Further, the establishment of the Design Review Board and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots and improvements as otherwise required under the Association Documents.

***Section 11.8 Limitation of Liability.*** The Design Review Board will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Design Review Board nor any individual Design Review Board member will be liable to any person for any official act of the Design Review Board in connection with submitted plans and specifications, except to the extent the Design Review Board or any individual Design Review Board member acted with malice or intentional wrongful acts. Approval by the Design Review Board does not necessarily assure approval by the appropriate governmental body or Garfield County. Notwithstanding that the Design Review Board has approved plans and specifications, neither the Design Review Board nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Executive Board, the Design Review Board, nor any agent thereof, nor Declarant, nor any of its partners,

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 27*

employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Design Review Board will be defended and indemnified by the Association in any such suit or proceeding, which may arise by reason of the Design Review Board's decisions. The Association, however, will not be obligated to indemnify each member of the Design Review Board to the extent that any such member of the Design Review Board is adjudged to be liable for malice or intentional wrongful acts in the performance of his or her duty as a member of the Design Review Board, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

***Section 11.9 Enforcement.***

**11.9.1** Any member or authorized consultant of the Design Review Board, or any authorized officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction (after the date of this Declaration) on a Lot to determine whether the improvements have been or are being built in compliance with the Association Documents and the plans and specifications approved by the Design Review Board.

**11.9.2** Before any improvements on a Lot may be occupied, the Owner of the Lot will be required to obtain a temporary certificate of compliance issued by the Design Review Board indicating substantial completion of the improvements in accordance with the plans and specifications approved by the Design Review Board, and imposing such conditions for issuance of a final certificate of compliance issued by the Design Review Board as the Design Review Board may determine to be appropriate in its reasonable discretion. Without limiting the generality of the preceding sentence, the Design Review Board may require that the Owner deposit with the board at any time (including prior to commencement of construction) such sums as may be necessary to complete the construction and landscaping on the Lot by a specified date. If the construction and landscaping is not completed as scheduled, the Design Review Board may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Association for the failure of the Owner to comply with these covenants, including without limitation the remedies set forth in this Section.

**11.9.3** Upon completion of construction, the Design Review Board will issue an acknowledged certificate of compliance setting forth generally whether, to the best of the Design Review Board's knowledge, the improvements on a particular Lot are in compliance with the terms and conditions of the Design Guidelines.

**11.9.4** Every violation of these covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member will be applicable. Without limiting the generality of the foregoing, these covenants may be enforced as provided below:

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

**11.9.4.2** The Association, upon request of the Design Review Board and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of these covenants. The Owner of the improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within thirty (30) days after the Association gives the Owner notice of the expenses, the

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 28*

sum owed to the Association will bear interest at the default rate from the date of the advance by the Association through the date of reimbursement in full, and all such sums and interest will be a default Assessment enforceable as provided in Article 7.

**11.9.4.3** All improvements commenced on the Property will be prosecuted diligently to completion and will be completed within two (2) years after commencement, unless an exception is granted in writing by the Design Review Board. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required two-year period, then after notice and opportunity for hearing, the Association may impose a fine of \$1,000 per day (or such other reasonable amount as the Association may set) to be charged against the Owner of the Lot until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Executive Board that such abandonment is for circumstances beyond the Owner's control. Such charges will be a default Assessment and lien as provided above in Article 7.

**Section 11.10 Binding Effect.** The actions of the Design Review Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it or with respect to any other matter before it, will be conclusive and binding on all interested parties. The failure of the Design Review Board to enforce the restrictions or procedural requirements in this Declaration or in any other applicable rules or regulations shall not constitute a waiver of the right to future enforcement of such restrictions or procedural requirements.

## ARTICLE 12 OWNERS' RIGHTS, OBLIGATIONS AND RESTRICTIONS

**Section 12.1 Common Areas.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Areas, subject to:

**12.1.1** This Declaration, any supplements to this Declaration, the Map, any Supplemental Map, and any other applicable covenants;

**12.1.2** Any restrictions or limitations contained in any deed conveying any Common Areas to the Association;

**12.1.3** The right of the Executive Board to adopt rules regulating the use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;

**12.1.4** The right of the Executive Board to suspend the right of an Owner to use facilities within the Common Areas: (i) for any period during which any charge or Assessment against such Owner's Lot remains delinquent, and (ii) for a period not to exceed ninety (90) days for a single violation or for a longer period in the case of any continuing violation of this Declaration, any supplements to this Declaration, or the Association Documents;

**12.1.5** The right of the Executive Board to charge reasonable admission, use or other fees for the use of any facility situated upon the Common Areas;

**12.1.6** The right of the Executive Board to permit the use of any facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests;

**12.1.7** Any governmental or quasi-governmental rules, regulations or statutes; and

Any Owner may extend such Owner's rights of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Executive Board. An Owner who leases his or her Lot shall be deemed to assign all such rights to the lessee of such Lot.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 29*

**Section 12.2 Septic Systems.** There is no central sewer system within Stirling Ranch. It shall be the responsibility of the Owner of each Lot to construct an Individual Sewage Disposal System ("ISDS") in accordance with Garfield County standards. If necessary, such system may be outside of Building Envelopes but must be a minimum of ten (10) feet from all Lot lines. All disturbed areas shall be revegetated and approved by the Design Review Board in accordance with the Design Review Guidelines. The costs of construction, installation, maintenance and approval shall be the sole responsibility of the Owner. Such ISDS shall not be utilized in a manner as to pollute or threaten to pollute ground or surface waters or to affect or pollute the water supply system of lots within the Property. Maintenance and repair, including periodic pumping of septic tanks no less than every two (2) years, is required. Lot Owners must provide as-built drawings of the ISDS to the Association for purposes of future maintenance and notify the Association when septic tanks are pumped. Enforcement of these requirements shall be by the Association, as well as other governmental entities as provided for by law. If the Association is required to maintain any septic tank owned by any individual Lot Owner, such Owner may be assessed for all expenses pursuant to Article 7.

**Section 12.3 Water Supply.** In Case Nos. 84CW741, 85CW139, 87CW244, 92CW238, 99CW036 and 02CW135, as amended from time to time, all in the District Court in and for Water Division No. 5 approved water rights for individual or community wells to serve the Property, and an augmentation plan whereby out-of-priority depletions associated with the use of such wells would be replaced with water provided to the Roaring Fork River system pursuant to a contract with the Basalt Water Conservancy District. It is intended that the water rights, augmentation plan and water supply contract described in these Water Court decrees will be conveyed or assigned by the Declarant to the Association no later than upon expiration of the Declarant control period. Fees associated with such contract will be paid by the Association and assessed to the Members in accordance with Article 7. The terms of the above Water Court Decrees, as such may be amended from time to time, shall be considered additional provisions of this Declaration which may be enforced by the Association or any Owner as would any other restriction contained in this document. Water uses within Stirling Ranch shall be restricted as provided in the Water Court Decrees approving the community water system and otherwise as follows:

**12.3.1 Shared wells and water system.** All lots will be served with shared wells and storage facilities. These wells are known as, or will be known as, Wells A through P, inclusive, and are located or will be located in various places throughout the Property, as more specifically set forth in the Water Court decrees approving water rights for the subdivision. An additional well located on Open Space north of Lot 22, known as "Gene's Well", serves an existing cabin on Lot 21. The Owner of Lot 21 shall have an exclusive right of use from Gene's Well for one dwelling (the cabin, or a replacement structure) on Lot 21, although such rights are limited as set forth in the Well Sharing Agreement for Gene's Well which is recorded in Book 828 at Page 858 of the Garfield County real property records, Reception No. 433699 (as amended by document recorded in Book 1126, Page 864). During the Declarant Control Period, the Declarant shall have the right, in its sole discretion, to assign wells to be shared among the various lots within the Property and the Expansion Property. After expiration of the Declarant Control Period, the Association shall likewise have the right to reassign shared wells or storage facilities. All Lots shall have water meters to be installed at the expense of Lot Owners, which meters shall have remote readouts so that they can be read on the exterior of the house by the Association. The Association shall have a right of access for the purpose of reading water meters. Expenses associated with operation, maintenance, repair and replacement of shared wells and associated facilities, or the construction of new wells or associated facilities, or the costs for electricity required to operate the water system, shall be shared pro rata according to the Sharing Ratio. Assessments for such expenses shall be in the manner set forth in Article 7. Declarant makes no warranties or representations as the production or water quality available from any particular well or wells on the Property.

**12.3.2 Primary residence on each lot.** One single family home on each Lot shall be entitled to domestic water from a well located within the development. It is contemplated that most Lots will share wells and storage tanks. Any additional residential Lots to be created on Lot 28 (and/or the community spa facility, manager's

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 30*

quarters and/or guest cabins which may be built on Lot 28) shall also be entitled to well water.

**12.3.3 Accessory dwelling units.** Well water shall be available to accessory dwelling units (ADUs) up to 1500 square feet in size to be located on some, but not all, Lots greater than four (4) acres in size. The Lots that shall be entitled to water for accessory dwellings are as follows: ADUs shall be allowed on Lots 2, 5, 8, 10, 11, 12, 15, 18, 20, 21(cabin or replacement structure to be served exclusively from Gene's Well), 22, 23 and 24 and 28 (manager's quarters plus up to two additional units per present land use approvals—if rezoned and further subdivided, a Supplemental Declaration will address water service to any additional residential units); ADUs shall not be allowed on Lots 1, 3, 4, 6, 7, 9, 13, 14, 16, 17, 19, 25, 26 and 27).

**12.3.4 Lawn and garden irrigation.** The amount of well water that can be used to irrigate lawn and garden areas within the development is strictly limited for the purpose of preserving groundwater supplies. Each residential unit (*i.e.* primary residence or ADU) within the development shall be entitled to no more than 3000 square feet of irrigated lawn or garden space from April 1 through October 30 of each year, unless a lesser amount is specified in the conveyance from the Declarant or in any Supplemental Declaration that may be recorded by the Declarant regarding the Expansion Property. There shall be no outdoor lawn and garden irrigation from November 1 through March 31 of each year. Additionally, in the event of any shortage in the availability of well water, in house uses shall take priority over outdoor lawn and garden irrigation. The Association shall be empowered to establish rules and regulations that further promote water conservation, including but not limiting to further restricting outdoor lawn and garden irrigation on one or more lots.

**12.3.5 Horses.** The water rights currently adjudicated for the Property allow for up to sixty-four (64) horses to be served by wells on the property. The owner(s) of each of the twenty-seven (27) residential lots within Stirling Ranch P.U.D. shall be entitled to at least two (2) horses. As described above, a community barn facility has been constructed by the Declarant on Open Space north of Lot 22 . Up to a total of sixty-four (64) horses may be kept at this barn facility or pastured elsewhere within the development according to rules and regulations that may be promulgated by the Association from time to time, although no one lot shall be entitled to more than four (4) horses.

**12.3.6 Easements for water system.** The Association shall have easements over and across all Lots for the purpose of locating, constructing, operating, maintaining, repairing and/or replacing wells, pumps, pipelines and water storage facilities pursuant to Section 4.4 (Blanket Utility Easements). If topography compels the location of any such water facility within a Building Envelope, the Association shall also have a limited easement within such Envelope for the limited purpose of locating, building, operating, maintaining and/or replacing such feature.

**12.3.7 Assessments for costs of water system.** The cost of locating, constructing, operating, maintaining, repairing and/or replacing any aspect of the community water system, including legal or engineering fees associated with designing, operating, or adjudicating water rights, may be assessed by the Association to the Lot Owners as set forth in Article 7 of this Declaration (Assessments).

**12.3.8 Irrigation ditches, laterals and pipelines.** Parts of the Property have been irrigated historically with non-potable water obtained from the Mountain Meadows Ditch. Historically irrigated areas include parts of Lots 21, 22, 23 and 24 and parts of the Common Area. It is intended that the irrigation water rights historically associated with the Property will continue to be used for irrigation purposes generally in accord with historical practice. The Declarant hereby reserves reasonable and necessary easements for the location, operation, maintenance, repair and replacement (including the replacement of ditches with pipelines) of any historical irrigation ditches, laterals, or pipelines on the Property, and the right to access those parts of the Property not within the Common Area that have historically been irrigated in order to irrigate in the future. These easements shall extend ten (10) feet on either side of the centerline of each ditch or pipeline and otherwise as may be necessary to irrigate the Property. The Declarant may reserve unto itself irrigation water rights to continue to irrigate historically irrigated

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 31*

areas on lots to be retained by Declarant, its successors, assigns or designees.

**12.3.9 Water supply contracts (augmentation).** The Association shall own, operate, and maintain the contracts with the Basalt Water Conservancy District referenced in the Water Court decrees for the Property (Case Nos. 84CW741, 85CW139, 87CW244, 92CW238, 99CW036, and 02CW135, as amended from time to time). The Association shall levy and collect assessments from the Lot Owners for costs associated with maintenance of these water contracts as provided in Article 7 (Assessments).

**12.3.10 Owners may not separately own or adjudicate water rights.** No Owner or group of Owners shall be entitled to separately adjudicate water rights, seek approval of a plan for augmentation, obtain well permits, or otherwise appropriate or divert surface or ground water on the Property without the prior written consent of the Association. This provision is intended to help preserve and protect available groundwater supplies for the common benefit of all Lot Owners.

**Section 12.4 Utilities.** Declarant has installed underground water, electric power and telephone utility conduit to terminations proximate to the driveway accesses to each Lot within the Property. It shall be the responsibility of an Owner to extend such utilities to the Building Envelope on the Owner's Lot in the manner and location approved by the Design Review Board, all at each Owner's sole cost and expense. Natural gas is not currently available to the Property. An Owner may contract for propane service with an individual tank located on the Owner's Lot, in a location to be approved by the Design Review Board, at Owner's sole cost. Easements are hereby reserved across the Common Areas to connect any new lots created within the Expansion Property to electricity, telephone, and other utilities generally available to the Property.

**Section 12.5 General Use Restriction.** Subject to Declarant's rights under Article 10, above, the Property will not be used for any purpose other than as set forth in this Declaration, or other than as permitted by any applicable ordinances of Garfield County and the laws of the State of Colorado and the United States, and as set forth in the Association Documents or other specific recorded covenants affecting all or any part of the Property.

**Section 12.6 Building Envelopes.** Except as set forth in this Section 12.6, no structures or other improvements of any kind shall be constructed or allowed to exist on any Lot outside of the area designated as "Building Envelopes" on the Plat Map, or in a separate map to be prepared by the Declarant, except for: (i) driveways, entrance monuments, decorative monuments delineating lot corners, wells, well houses, septic systems (ISDS), water tanks, historical structures, pathways, walkways and trails, all as approved by the Design Review Board; and (ii) Roads, utilities and other improvements to be constructed hereunder by or at the instance of Declarant or the Association, unless a variance is obtained from the Design Review Board. No dwelling unit, caretaker unit, or accessory dwelling unit shall be constructed or allowed to exist on any Lot except within the area designated for each Lot as a Building Envelope. Declarant reserves the right, as to any Lot(s) of which it is the record owner, to amend the Building Envelope of such Lot(s). Should Declarant fail to designate a Building Envelope for any Lot, construction on such Lot must be in accordance with the Zone District Text for the Stirling Ranch P.U.D. and subject to the approval of the Design Review Board.

**Section 12.7 Driveway Access Areas.** No driveways or access roads shall be constructed or allowed to exist on any Lot except within the areas designated as "Common Driveway Area" or "Driveway Access Area" on separate Maps to be prepared by the Declarant coincident with each initial Lot sale. The costs of constructing, maintaining, replacing and repairing a driveway or access road within the Driveway Access Area shall be the sole responsibility of the Lot Owner. The Design Review Board may grant variances for alternate driveway locations, in its discretion, so long as notice is provided to the owners of all adjoining Lots and an opportunity for input is given to the owners of such neighboring Lots.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 32*

**Section 12.8 Tennis Courts.** No tennis courts shall be allowed on individual Lots; provided however that the Declarant or the Association may elect to build tennis courts on Common Area or on Lot 28.

**Section 12.9 Use of Lots.** Each Lot may be used only for residential purposes in accordance with the restrictions applicable to a particular Lot contained in this Declaration, attached lot descriptions, the Map and in the Garfield County Building, Zoning or Subdivision Regulations, except for Lot 28 which may contain community spa or club house facilities.

**Section 12.10 Excavation.** No excavation shall occur without the prior written approval of the Design Review Board. For purposes of this Section, "excavation" means any disturbance of the surface of the land, which results in a movement of earth, rock, trees or other substances.

**Section 12.11 No Mining or Drilling.** No portion of any Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided, however, that subject to approval by the Design Review Board an Owner may remove rock, stone and earth from such Owner's Lot for use in the construction, installation or repair of any improvements located on such Owner's Lot. The Declarant, Declarant's specific assigns, successors or designees, the Association and the Association's specific assigns and designees may, subject to approval by the Design Review Board, mine, quarry or remove rock, stone, gravel and earth from any Lot owned by Declarant or Declarant's affiliates in connection with the construction, installation, repair and maintenance of Common Areas and utilities.

**Section 12.12 Antennae.** To the extent allowed under current Federal Communications Commission regulations and other applicable laws, no exterior radio, television, microwave or other antennae or signal capture and distribution device will be permitted without the prior written consent of the Design Review Board and appropriate screening, and satellite dishes shall be appropriately regulated by the Design Review Board.

**Section 12.13 Signs.** All signs of any type within the Property are subject to regulation by the Design Review Board. It is contemplated that the only allowable signs will be small for sale or for rent signs to be used on a temporary basis or signs indicating the street address or house number for each home. All decorative entrance monuments shall also be subject to approval by the Design Review Board.

**Section 12.14 Animals and Pets.** No more than one (1) dog may be allowed for each residential unit on each Lot. All dogs shall be confined within the Building Envelope designated for the Lot upon which they reside. Electric fencing is encouraged. All kennels or fences shall be approved by the Design Review Board and in accordance with any additional specifications set forth in the Design Review Guidelines. The Association may promulgate rules and regulations from time to time with regard to the kind and number of other household pets that may be permitted, prohibited or regulated on any portion of the Property in compliance with governmental statutes, codes, regulations and ordinances and the PUD Agreement. The Association may approve no more than four (4) horses on any one Lot, and the total number of horses on the Property may not exceed sixty-four (64), as more specifically set forth in Section 12.3.5, above. The Association may promulgate rules and regulations from time to time regarding the number of horses kept on the Property, so long as the total number of horses within the development does not exceed sixty-four (64).

**Section 12.15 Drainage.** No Owner will do or permit any work, place any landscaping or install any other improvements or suffer the existence of any condition whatsoever which will alter or interfere with the Ditch Easement Areas or drainage pattern for the Property, except to the extent such alteration and drainage pattern is approved in writing by the Design Review Board or the Executive Board, and except for rights reserved to Declarant to alter or change drainage patterns.

**Section 12.16 Construction Regulations.** All Owners and contractors will comply with the portions of the Design Review Guidelines regulating construction activities. Such regulations may affect, without limitation,



*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 33*

the following: trash and debris removal; signage; speed limits; traffic safety; sanitary facilities; parking areas; outside storage; restoration of damaged property; road impact fees; repair fees; the conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time; the conservation of landscape materials; fire protection; and the timing of any construction activities. Construction workers may not bring dogs to construction sites within the Property. The Association may levy fines upon non-compliant Owners or their contractors or temporarily or permanently restrict entrance to the Property by offending contractors. Anyone who violates these restrictions may be prohibited by the Association from re-entering the development for a period of ten (10) days for the first violation and permanently upon the second violation.

**Section 12.17 *Blasting.*** No blasting shall occur without the prior written approval of the Design Review Board. If any blasting is to occur, the Design Review Board and Declarant must be informed far enough in advance to allow them or their agents to conduct such investigations as they deem necessary to confirm that appropriate protective measures will be taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Design Review Board will in any way release the person or entity conducting the blasting from all liability in connection with the blasting, nor will such approval in any way be deemed to make Declarant or the Design Review Board liable for any damage which may occur from blasting, and the person or entity doing the blasting will defend and hold harmless and hereby indemnifies Declarant and the Design Review Board from any such expense or liability. Declarant or the Design Review Board may impose any reasonable conditions and restrictions, including time and date restrictions, on all blasting.

**Section 12.18 *Temporary Structures.*** No temporary structures will be permitted except as may be authorized by the Design Review Board.

**Section 12.19 *No Conversion.*** No Owner shall construct or convert any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other integral part of the living area on any residence without approval of the Design Review Board, the Association and the Garfield County Building and Planning Department.

**Section 12.20 *Clotheslines.*** Any laundry or wash dried or hung outside on the Property shall be screened from view from any location on any other Lot.

**Section 12.21 *Parking and Auto Repair.*** No automobiles, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles will be parked on any Road or upon any portion of the Property except within garages, carports or designated parking areas except as provided herein. No work on automobiles or other vehicle repair will be performed in any visible or exposed portion of the Property except in emergencies. This restriction, however, will not be deemed to prohibit commercial and construction vehicles and construction mobile offices, in the ordinary course of business, from making deliveries or otherwise providing services to the Property or for Declarant or the other Owners.

**Section 12.22 *Abandoned, Inoperable or Oversized Vehicles.*** No abandoned or inoperable vehicles of any kind will be stored or parked on any portion of the Property, other than within enclosed garages, except as provided below. "Abandoned or inoperable vehicle" is defined as any vehicle, which has not been driven under its own propulsion for a period of three months or longer; provided, however, this will not include vehicles parked by Owners while on vacation or residing away from Stirling Ranch. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle by the Association. If such vehicle has not been removed within seventy-two (72) hours after notice has been given, the Association will have the right to remove the vehicle without liability, and the expense of removal will be a Default Assessment charged against the Owner as provided in Article 7. All unsightly or oversized vehicles, horse trailers, snow removal equipment, garden maintenance equipment, or other outdoor equipment or machinery shall be stored in a garage, at a location designated by Declarant or the Association, hidden from view, or as otherwise required by the Design Review Board. "Oversized" vehicles, for purposes of this Section, will be

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 34*

vehicles that are too high to clear the entrance of a residential garage.

**Section 12.23 *Speed Limits and Traffic Safety.*** Unless otherwise posted by the Association, the maximum speed limit on any road or driveway within the Property shall be twenty (20) miles per hour. All vehicles shall be operated reasonably and prudently within the Property. The Association may promulgate additional traffic safety regulations from time to time, and shall have the authority to sanction violators by imposing fines or restricting access to the Property on a temporary or permanent basis.

**Section 12.24 *Outside Burning.*** There will be no exterior fires, except barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Design Review Board. No Owner will permit any condition upon its portion of the Property, which creates a fire hazard or is in violation of fire prevention regulations.

**Section 12.25 *Noise.*** The Design Review Board shall have authority to regulate noise within the Property, including but not limited to exterior horns, speakers, whistles, bells or other sound devices.

**Section 12.26 *Lighting.*** All exterior lighting of the improvements and grounds on the Property, or interior lighting visible outside of any building or improvement, will be subject to regulation by the Design Review Board and the Design Review Guidelines. Generally, all such lighting shall be oriented downward and inward so as not to unreasonably affect other Lot Owners or neighboring properties.

**Section 12.27 *House Numbers.*** Each dwelling unit will be labeled with a house number with a design and location established by the Design Review Board and as otherwise required by the Carbondale Rural Fire District. Street addresses within Stirling Ranch shall be designated on a separate document approved by Garfield County. Additional street addresses, if any, shall also be established according to the standards of the Garfield County Building and Planning Department.

**Section 12.28 *Nuisances.*** No obnoxious or offensive activity will be carried on within the Property, nor will anything be done or permitted which will constitute a public nuisance. No noise or other nuisance will be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants.

**Section 12.29 *Hazardous Materials.*** No Owner will dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

**Section 12.30 *Fences.*** See below Section 12.35.2.

**Section 12.31 *No Snowmobiles, Trail Bikes or other Off-highway Vehicles.*** No snowmobiles, trail bikes or other motorized recreational vehicles shall be operated within the Property, except in the case of emergencies and as may be reasonably required by the Association for maintenance purposes.

**Section 12.32 *No Hunting.*** No hunting of any kind will be permitted within the Property other than with the approval of the Executive Board in order to eliminate a nuisance or to protect the health, safety and welfare of the Owners.

**Section 12.33 *Trees/Landscaping.*** No trees or shrubs may be removed from any portion of the Property without the prior written approval of the Design Review Board. Each tree or shrubs that is removed must be replaced with two similar plants on the same Lot. All landscaping must be approved by the Design Review Board.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 35*

**Section 12.34 General Practices Prohibited.** The following practices are prohibited within the Property:

**12.34.1** Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Design Review Board;

**12.34.2** Discharge of firearms on the Property;

**12.34.3** Use of surface water for construction;

**12.34.4** Careless disposition of cigarettes and other flammable materials;

**12.34.5** Capturing, trapping or killing of wildlife within the Property, except in circumstances posing an imminent threat to the safety of persons using the Property; or

**12.34.6** Any activity which materially disturbs, threatens or destroys the vegetation, wildlife, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.

**Section 12.35 Wildlife.** Each Owner will abide by any wildlife regulations imposed by the Association Rules or by any agency or authority having jurisdiction over the Property. Additionally, the following restrictions shall apply to the Property, which terms have been developed per the recommendations of the Colorado Division of Wildlife ("CDOW"):

**12.35.1** As set forth above in Section 12.14, only one (1) dog shall be allowed for each residential unit on each Lot, excepting offspring up to three (3) months old. All dogs must be confined with approved facilities, such as fences, runs or kennels, which structures shall be subject to the approval of the Design Review Board. Any runs must be immediately adjacent to the main home on a Lot, and within any designated building envelope. If any dogs are kept on the Property without adequate facilities to contain the dog(s), the Association may compel the Owner to immediately remove the animal(s) from the Property until adequate structures are built. At no time shall dogs be allowed to run freely in the development out of the control of the Owner, including on the Trail Easement. Dogs outside their yard, kennel or dog run must be on a leash or under the direct control of their Owner or a responsible designee (provided, however, that at all times compliance with these restrictions shall remain the responsibility of the Owner). Any dog(s) kept within the Property must be licensed to the extent required by Garfield County and must wear any tags required by the County. Visitors to the Property and contractors or subcontractors working on the Property shall not bring dogs onto the Property. Anyone who violates this restriction may be prohibited by the Association from re-entering the development for a period of ten (10) days for the first violation and permanently upon the second violation. Garfield County and/or the Colorado Division of Wildlife shall also have the authority to control stray dogs within the development. Persons not in compliance with these dog restrictions shall be responsible for any costs incurred by the County and/or CDOW in enforcing these restrictions.

**12.35.2** Fencing will be restricted throughout the development to facilitate wildlife movements, optimize habitat availability, and reduce wildlife mortality. If peripheral fencing is required to restrict livestock grazing on adjacent properties, fencing shall employ a three (3) strand wire fence, with strands located at eighteen (18), thirty (30) and forty-two (42) inches above mean ground level (optimum strand locations would be fourteen (14), twenty-six (26) and thirty-eight (38) inches above ground level). If wood rail fencing is used it also should not exceed forty-two (42) inches in height. Wood rails shall not exceed twelve inches (12") in width. An opening of at least sixteen inches (16") shall be constructed in the lower half of wooden fences to allow passage of deer fawns and elk calves. Other fence materials such as wood slats or electric fencing may be used but must be wildlife friendly and not exceed forty-two (42) inches in height. The Design Review Board, in its discretion, may only permit Owners to have a privacy fence greater than forty-two (42) inches in height with no openings if such fence will enclose nor

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 36*

more than 2500 square feet on a Lot, and provided that such privacy fencing is immediately adjacent to a residence and entirely within the building envelope. Any security fencing, if permitted by the Design Review Board, must be no less than seven (7) feet in height and constructed so that wildlife movement within the Property is not impaired. Owners may obtain information from CDOW as to whether a fence design other than the specific designs described herein will be wildlife friendly.

**12.35.3** Horses may be kept on the Property subject to the restrictions in these Covenants. In designing rules and regulations applicable to keeping horses on the Property, the Association shall consult with the Natural Resources Conservation Service to determine the carrying capacity of pasture areas and a plan to manage animal wastes. If horses will be kept within ¼ mile of critical wildlife habitat, then only certified weed free forage shall be used as feed. All hay and grain will be kept in an elk and deer proof storage area.

**12.35.4** There shall be no outside storage of any trash or garbage at any residence or anywhere on the Property, with the exception of bear-proof trash containers. Refuse should not be kept within detached garages or sheds because bears can break into these structures. Owners shall not use compost piles unless such piles are in a bear-proof receptacle approved by the Design Review Board. (Only those receptacles certified by the North American Bear Society, National Park Service, or CDOW shall be considered "bear-proof".) There shall be no dumps or underground disposal of refuse within the development. Pets shall not be fed outside. With the exception of bird feeders, the feeding, baiting, salting or other means of attracting wildlife to individual Lots is prohibited.

**12.35.5** To protect bird nesting areas and perches, no native cottonwood trees shall be cut on the Property at any time without prior written approval from the Association and CDOW.

**12.35.6** Except as otherwise provide herein, no persons or pets within the development shall chase, scare, frighten, disturb or otherwise harass wildlife on Open Space within the Property. The Association shall have the right to locally restrict wildlife from landscaping clumps and other sensitive areas, such as spa or barn facilities, by using temporary fencing or other passive means. Any such fencing shall not restrict free movement of wildlife but should be used in small, isolated areas to help alleviate possible problems.

**12.35.7** The Association may place additional seasonal use restrictions on important wildlife habitats, such as game migration corridors, elk calving areas, waterfowl nesting areas, heron rookeries, severe winter ranges, or winter concentration areas.

**12.35.8** The Association shall provide Owners with brochures from the CDOW explaining the local wildlife community and what residents must do to ensure the continued protection of wildlife.

**12.35.9** The Association is hereby empowered to enforce all of the wildlife restrictions set forth in this Section 12 according to the following guidelines. First time violators shall be provided with a written warning. The Association shall impose a fine of \$100.00 for a second violation, and \$200.00 for a third violation. For a fourth offense, the Association shall either impose a fine of \$400.00 or, in the case of a pet related violation, remove the animal causing the problem for a period of six (6) months at the expense of the animal's owner. Fines shall be paid within thirty (30) days of presentment. Delinquent fines will accrue interest at the rate of one-point-five percent (1.5%) per month, eighteen percent (18%) per annum. Fines may be collected by the Association as an assessment against the Owner and a statutory lien against that Owner's property will exist until payment of the fine, plus any associated interest, costs and/or attorneys' fees incurred by the Association in addressing the violation(s). Eighty-five percent (85%) of the funds collected by the Association as fines shall be contributed to the Wildlife Mitigation Fund, the remaining fifteen percent (15%) of such funds shall be kept by the Association and used for general purposes. If the Association intentionally fails to enforce these wildlife guidelines for any reason, the CDOW shall have the authority to enforce these guidelines, and to impose the fines set forth herein jointly and severally against the Association and/or the offending Lot Owner(s).

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 37*

**12.35.10** The Declarant, the Association, and all Lot Owners shall indemnify and hold harmless the CDOW from any claims relating to wildlife damage on the Property.

**Section 12.36 Use of Property During Construction.** It will be expressly permissible and proper for any Owner acting with the prior written consent of the Design Review Board and for Declarant, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Property, the Expansion Property or other real property owned by Declarant, to perform such activities and to maintain upon portions of the Common Areas as they deem necessary such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage areas, construction yards, model residences, sales offices, management offices and equipment and signs. However, no activity by any Owner will be performed and no facility will be maintained on any portion of the Property in such a way as to unreasonably interfere with or disturb any Owner of a Lot, or to unreasonably interfere with the use, enjoyment or access of such Owner or his tenants or guests of and to his Lot. If any Owner's use under this provision is deemed objectionable by the Design Review Board, then the Design Review Board, in its sole discretion, may withdraw this permission.

**Section 12.37 Partition or Combination of Lots.** No part of a Lot may be partitioned or separated from any other part thereof, except as may be authorized by this Declaration and approved by the Design Review Board. Two or more Lots may be combined, upon complying with all applicable requirements of Garfield County and obtaining approval of the Design Review Board, and upon compliance with all applicable Design Guidelines, including without limitation procedures for adjusting Development and Building Envelopes otherwise drawn for the Lots, measures necessary to preserve any easements reserved with respect to the contiguous Lots, and the requirements of this Declaration and the Act.

**Section 12.38 No Timeshares.** No Lot shall be used for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years.

**Section 12.39 Leasing.** The Owner of a Lot will have the right to lease his Lot, subject to the following conditions:

**12.39.1** All leases will be in writing.

**12.39.2** All leases shall be expressly subject to the Association Documents and Garfield County regulations, and any failure of a tenant to comply with the Association Documents will be a default under the lease, enforceable by the Association.

**12.39.3** The Owner shall be liable for any violation of the Association Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

**Section 12.40 Commercial Activities.** No commercial activities shall be permitted on the Property, except that Owners shall be allowed to maintain home offices within their residences so long as such does not result in members of the public coming to the residence on a regular basis and all required approvals are obtained from Garfield County. The storage of materials, goods, equipment, and other items used or associated with commercial activities shall not be permitted, provided however that personal vehicles with a business name on them shall be allowed. The Association shall have authority to promulgate rules and regulations from time to time regarding businesses, trades, garage sales, moving sales, rummage sales or similar activities on any Lot. Without limiting the generality of the foregoing, in no event shall any Lot be used for any mechanical repair business, manufacturing business, or other similar industrial or commercial use.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 38*

**Section 12.41 Compliance with Laws.** Subject to the rights of reasonable contest, each Owner will promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

**Section 12.42 Enforcement.** Notwithstanding anything in the foregoing to the contrary, the Executive Board may prohibit any activity, business or otherwise, which, in the sole direction of the Executive Board, constitutes a nuisance, or a hazardous or offensive use, or threatens the security, safety, or quiet enjoyment of other residents of the Property. The Association may take such action as it deems advisable to enforce these covenants as provided in this Declaration. In addition, the Association will have a right of entry on any part of the Property for the purposes of enforcing these covenants, and any costs incurred by the Association in connection with such enforcement which remain unpaid thirty (30) days after the Association has given notice of the cost to the Owner and otherwise complied with Act will be subject to interest at the default rate from the date of the advance by the Association through the date of payment in full by the Owner, and will be treated as a Default Assessment enforceable as provided in Article 7.

**Section 12.43 Use of the Terms "Stirling Ranch", "Sun Mesa" or Logos.** No Person shall use the words "Stirling Ranch" or "Sun Mesa", or any derivative thereof, or any other name given to the Property by the Declarant, or the logo of the development in any printed or promotional material without Declarant's prior written consent. Any breach of this agreement by an Owner shall entitle the Declarant to immediate injunctive relief and reasonable attorneys' fees as determined by the court. However, Owners may use the above terms in printed or promotional matter where such term is used solely to specify that particular property is located within the Property and the Association shall be entitled to use the words "Stirling Ranch" in its name.

### ARTICLE 13 DAMAGE OR DESTRUCTION

**Section 13.1 The Role of the Executive Board.** Except as provided in Section 13.6., in the event of damage to or destruction of all or part of any Common Area improvement, or other property covered by insurance written in the name of the Association under Article 8, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged Property (the Property insured by the Association pursuant to Article 8 is sometimes referred to as the "Association-Insured Property").

**Section 13.2 Estimate of Damages or Destruction.** As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Article 13 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

**Section 13.3 Repair and Reconstruction.** As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Any repair and reconstruction of damaged or destroyed Roads shall, at a minimum, meet all standards approved by Garfield County for the Property. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

**Section 13.4 Funds for Repair and Reconstruction.** The proceeds received by the Association from

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 39*

any hazard insurance carried by the Association shall be used for the purpose of repair and reconstruction of the Association-Insured Property. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Article 7, Section 7.6. but subject to applicable law, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

**Section 13.5 Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot, to the Owners thereof, as their interests appear or, in the reasonable discretion of the Executive Board, the balance may be paid to any maintenance or working capital reserves maintained by the Executive Board.

**Section 13.6 Decision Not to Rebuild Common Area.** If Owners representing at least ninety percent (90%) of the total allocated votes in the Association (other than Declarant) and all directly adversely affected Owners agree in writing not to repair and reconstruct improvements within the Common Areas and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Areas by the Association in a neat and attractive condition. In the event such a written agreement not to repair and reconstruct is made regarding any Road, such decision must additionally receive the written consent of the Board of County Commissioners of Garfield County, Colorado. Any remaining insurance proceeds shall be distributed in accordance with the Act.

#### ARTICLE 14 CONDEMNATION

**Section 14.1 Rights of Owners.** Whenever all or any part of the Common Areas shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Areas is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**Section 14.2 Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Areas was conveyed and, unless otherwise required under the Act, the award shall be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least ninety percent (90%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board and the Design Review Board. If such improvements are to be repaired or restored, the provisions in Article 13 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners, as their interests appear.

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 40*

**Section 14.3 Complete Condemnation.** If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Article 13, Section 13.5 above.

#### ARTICLE 15 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 8 upon their damage or destruction as provided in Article 13, or a complete or partial taking as provided in Article 14. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

#### ARTICLE 16 DURATION OF COVENANTS AND AMENDMENT

**Section 16.1 Term.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

**Section 16.2 Amendment.** This Declaration, or any provision of it, may be amended at any time by Owners holding more than sixty-seven percent (67%) of the votes possible to be cast under this Declaration, by a vote at a meeting of the Owners called for that purpose or by proxy or written consent in lieu of a meeting; provided, however, matters not requiring Owner approval as described in Colo. Rev. Stat. 38-33.3-217(1) may be handled by the Executive Board. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. No amendment to the Declaration, which affects the rights of Declarant reserved hereunder, shall be valid without the written consent of Declarant. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or the Map to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

**Section 16.3 Revocation.** This Declaration shall not be revoked, except as provided in Article 14 regarding total condemnation, without the consent of all of the Owners evidenced by a written instrument duly recorded.

#### ARTICLE 17 GENERAL PROVISIONS

**Section 17.1 Restriction on Declarant Powers.** Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply





626568 05/02/2003 03:44P B1465 P843 M ALSDORF  
41 of 45 R 226.00 D 0.00 GARFIELD COUNTY CO

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 41*

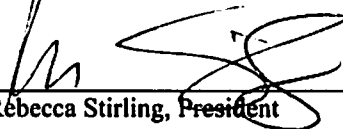
with the Act.

**Section 17.2 Enforcement.** Except as otherwise provided in this Declaration, the Executive Board, Declarant, or any Owner (provided the Executive Board fails to take action after reasonable notice is given to the Executive Board by such Owner) shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any legal action arising under this Declaration shall be entitled to reimbursement of all costs of such action including, without limitation, reasonable attorneys' fees.

**Section 17.3 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 17.4 Conflicts Between Documents.** In case of conflict between this Declaration and the Articles and the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

**DECLARANT:**  
STIRLING-SUN MESA, Inc., a Colorado corporation

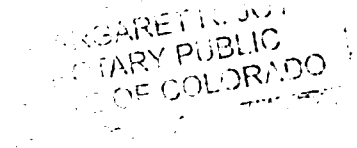
  
\_\_\_\_\_  
Rebecca Stirling, President

STATE OF COLORADO        }  
  } ss.  
COUNTY OF GARFIELD    }

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of MAY, 2003, by Rebecca Stirling, President of Stirling-Sun Mesa, Inc., a Colorado corporation..

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: 12-23-04



  
\_\_\_\_\_  
Notary Public

[this space intentionally left blank]

Stirling Ranch P.U.D.

Declaration of Covenants, Conditions, Restrictions & Easements

Page 42

CONSENT TO INCLUSION OF LOT 10:

LOT 10:  
STIRLING PROPERTIES, LLC, Owner of Lot 10, Stirling  
Ranch, P.U.D.

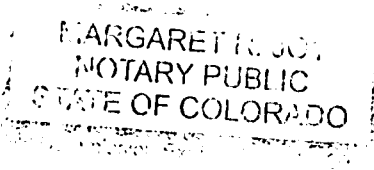
*[Handwritten Signature]*  
\_\_\_\_\_  
Rebecca Stirling, Manager

STATE OF COLORADO        }  
  } ss.  
COUNTY OF GARFIELD    }

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2003, by Rebecca Stirling, Manager of Stirling Properties, L.L.C., a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: 12-23-04



*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public

[this space intentionally left blank]



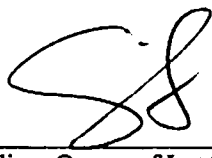
626568 05/02/2003 03:44P B1465 P845 M ALSDORF  
43 of 45 R 226.00 D 0.00 GARFIELD COUNTY CO

*Stirling Ranch P.U.D.*

*Declaration of Covenants, Conditions, Restrictions & Easements*

*Page 43*

**CONSENT TO INCLUSION OF LOT 22:**

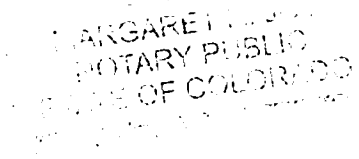
LOT 22:   
\_\_\_\_\_  
Rebecca R. Stirling, Owner of Lot 22, Stirling Ranch, P.U.D.

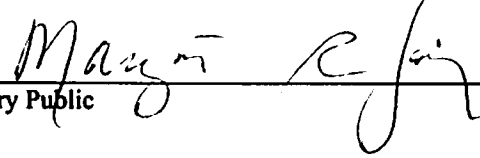
STATE OF COLORADO        }  
  } ss.  
COUNTY OF GARFIELD    }

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of July, 2003, by Rebecca R. Stirling.

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: 12-23-04



  
\_\_\_\_\_  
Notary Public

[this space intentionally left blank]



626568 05/02/2003 03:44P B1465 P846 M ALSDORF  
44 of 45 R 226.00 D 0.00 GARFIELD COUNTY CO

*Stirling Ranch P.U.D.*  
*Declaration of Covenants, Conditions, Restrictions & Easements*  
*Page 44*

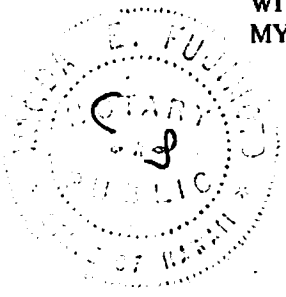
**CONSENT TO INCLUSION OF LOTS 16 AND 21:**

**LOT 16:** *[Signature]*  
Avigale Stirling Mcloughlin, Owner of Lot 16, Stirling Ranch,  
P.U.D.

STATE OF HAWAII            }  
  } ss.  
COUNTY OF KAUAI        }

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 2003, by Avigale Stirling Mcloughlin.

WITNESS MY HAND AND OFFICIAL SEAL,  
MY COMMISSION EXPIRES: 6-14, 2004



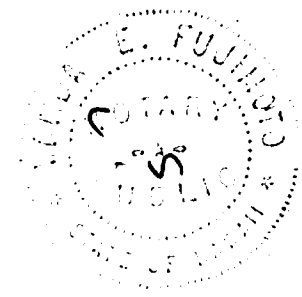
*Wanda E. Fujimoto*  
Notary Public        WANDA E. FUJIMOTO

**LOT 21:** *[Signature]*  
Ariana M. Stirling, Owner of Lot 21, Stirling Ranch, P.U.D.

STATE OF HAWAII            }  
  } ss.  
COUNTY OF KAUAI        }

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 2003, by Ariana M. Stirling.

WITNESS MY HAND AND OFFICIAL SEAL,  
MY COMMISSION EXPIRES: 6-14-2004



*Wanda E. Fujimoto*  
Notary Public




626568 05/02/2003 03:44P B1465 P847 M ALSDORF  
45 of 45 R 226.00 D 0.00 GARFIELD COUNTY CO

*Stirling Ranch P.U.D.*  
*Declaration of Covenants, Conditions, Restrictions & Easements*  
*Page 45*

**LENDERS' CONSENTS:**

Stirling Properties, L.L.C., beneficiary of a Deed of Trust recorded in Book 1322 on Page 403 of the Garfield County real property records, Reception No. 596039, consents to the inclusion of the collateral named in said Deed of Trust within the Planned Community described in this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stirling Ranch, P.U.D.

STIRLING PROPERTIES, L.L.C., a Colorado limited liability company

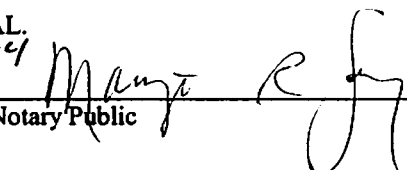
  
\_\_\_\_\_  
Rebecca Stirling, Manager

STATE OF COLORADO        }  
  } ss.  
COUNTY OF GARFIELD    }

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2003, by Rebecca Stirling, President of Stirling-Sun Mesa, Inc., a Colorado corporation.


WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES: 12-23-04

MARGARETTA S. JOY  
NOTARY PUBLIC  
STATE OF COLORADO

  
\_\_\_\_\_  
Notary Public

Alpine Bank, beneficiary of a Deed of Trust affecting Lot 10, Stirling Ranch, P.U.D., which document was recorded in Book 1354 on Page 716 of the Garfield County real property records, Reception No. 603328, consents to the inclusion of the collateral named in said Deed of Trust within the Planned Community described in and governed by this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stirling Ranch, P.U.D.

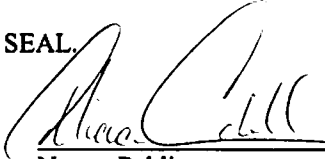
ALPINE BANK

  
\_\_\_\_\_  
By: Richard Fuller, President  
Print Name Title

STATE OF COLORADO        }  
  } ss.  
COUNTY OF GARFIELD    }

The foregoing instrument was acknowledged before me this 30 day of April, 2003, by Richard Fuller as President of Alpine Bank.

WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES: 8-31-06

  
\_\_\_\_\_  
Notary Public

