



**928910**  
Page: 1 of 66  
09/08/2005 04:38P  
Teak J Simonton Eagle, CO 135 R 331.00 D 0.00

**DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
BRIGHTWATER CLUB**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BRIGHTWATER CLUB (the "Declaration") is made as of September 8, 2005, by Clearwater Development, Inc., a Colorado corporation ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property located in Eagle County, Colorado, more particularly described on the attached Exhibit A (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, et. seq. (the "Act") on the Property, the name of which is Brightwater Club. The Association (as hereinafter defined) shall act as a master owners association with respect to all Units (as hereinafter defined) initially subject to this Declaration and any Units hereinafter made subject to 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.

**ARTICLE 2  
DEFINITIONS**

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

Section 2.1 "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 2.2 "Annexation Agreement" means that certain Sahwatch Amended and Restated Annexation Agreement, recorded September 7, 2000, at Reception No. 738542, in the Office of the Clerk and Recorder in Eagle County, Colorado.

Section 2.3 "Annexed Property" is defined in Section 14.1.1 hereof.

Section 2.4 "Annual Assessment" means the Assessment levied annually.

Section 2.5 "Assessments" means the Annual, Special, Real Estate Transfer and Default Assessments levied pursuant to Article 10 below. Assessments are further defined as a Common Expense Liability as defined under the Act.

Section 2.6 "Association" means Brightwater Club Property Owners Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 "Association Documents" means this Declaration, the Articles, the Bylaws and the Association Rules and any procedures, rules, regulations, or policies adopted under such documents by the Association.

Section 2.8 "Association Rules" means the rules and regulations adopted by the Association as provided in Section 4.11.

Section 2.9 "Assumed Risks" is defined in Section 16.18.1.7 hereof.

Section 2.10 "Blanket Utility Easement Area" is defined in Section 8.4.1 hereinbelow.

Section 2.11 "Brightwater Club" means the planned community created by this Declaration, consisting of the Property, the Units, and any other improvements constructed on the Property and as shown on the Plat.

Section 2.12 "Building Envelope" is defined in Section 16.1.1 hereinbelow.

Section 2.13 "Business Association" is defined in Section 10.9.1.1 hereof.

Section 2.14 "Business Association Member" is defined in Section 10.9.2.6 hereof.

Section 2.15 "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

Section 2.16 "Club" means that certain private membership organization known as The Club at Brightwater and operated on real estate located generally adjacent to the Property.

Section 2.17 "Common Area" means all the real property and improvements thereon, if any, in which the Association owns or has a real property interest for the common use and enjoyment of all of the Owners on a non-exclusive basis (such as estates in fee, for terms of years, or easements). Common Area is further defined as a Common Element as defined under the Act. Common Area may or may not include the Preserve Area as further described in Section 6.5 and Section 16.23.

Section 2.18 "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; (iv) insurance premiums for the insurance carried under Article 9; and (v) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.19 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing within Brightwater Club, or the minimum standards established by the Design Guidelines and the rules and regulations of the Association, whichever is the highest standard. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Brightwater change.

Section 2.20 "Declarant" means Clearwater Development, Inc., a Colorado corporation and its affiliates, successors and assigns. No party other than Clearwater Development, Inc. shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real

property records of Eagle County, Colorado a written assignment from Clearwater Development, Inc. of all or a portion of such rights and privileges.

Section 2.21 "Declarant Control Period" means the period of time commencing on the date of incorporation of the Association and terminating on the earliest of the following events: (i) sixty (60) days after conveyance by Declarant of seventy-five percent (75%) of the total number of Units that may be created under this Declaration, including all Units permitted to be created by Declarant by further subdivision of the Development Parcels, (ii) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, (iii) two (2) years after any right to add new Units was last exercised by Declarant, or (iv) the date on which Declarant voluntarily relinquishes such power, evidenced by a notice recorded in the Office of the Clerk and Recorder for Eagle County, Colorado.

Section 2.22 "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for Brightwater Club, as amended and supplemented from time to time.

Section 2.23 "Default Assessment" means the Assessments levied by the Association pursuant to Section 10.8 below.

Section 2.24 "Design Guidelines" means the guidelines and rules published and amended and supplemented from time to time by the Design Review Board including, without limitation, rules and regulations of the Association relating to construction activity within Brightwater Club.

Section 2.25 "Design Review Board" means and refers to the Design Review Board defined in and created pursuant to Article 15 below.

Section 2.26 "Development Parcel" means a tract of land subject to this Declaration which is designated for development and further subdivision into residential Lots, Units and Common Area pursuant to the Town Documents and described as "Future Development" on the Filing 1 Plat, and shall include any portion of a Development Parcel that is capable of further subdivision into residential Lots, Units and Common Area after such Development Parcel has been initially subdivided. Without limiting the foregoing, the following parcels described on the Filing 1 Plat are each a Development Parcel: Parcels G, H, J, K, L, O and P. The Development Parcels may be collectively referred to as the "Development Parcels."

Section 2.27 "Director" means a member of the Executive Board.

Section 2.28 "District" means, the Valagua Metropolitan District, a Colorado quasi-municipal corporation.

Section 2.29 "Equestrian Lot" means any Lot designated by the Town Documents permitting horses and other equestrian activities on said Lot.

Section 2.30 "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 2.31 "Filing 1 Plat" means the Final Plat, Brightwater Club Filing 1, recorded in the records of the Clerk and Recorder of Eagle County, Colorado on May 18, 2005, at Reception No. 916179, and all supplements and amendments thereto.

Section 2.32 "First Mortgage" means an unpaid and outstanding Mortgage which secures financing for the construction and development of Brightwater Club or which encumbers a Unit, and

which, in any case, has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.33 "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.34 "Function" means any activity, function or service required 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 2.35 "Golf Course" means the golf facility, including but not limited to, golf course, golf clubhouse, driving range, golf practice area, golf cart paths, and putting course, located adjacent to Brightwater Club and operated by the Club.

Section 2.36 "Golf Course Hazards" means or refers to those hazards set forth in Section 16.18.1 hereof.

Section 2.37 "Guests" means any family member, agent, employee, independent contractor, guest, licensee or invitee of an Owner or Lessee and any person or persons, entity or entities who have any right, title or interest in a Unit which is not the fee simple title to the Unit (including a Lessee), and any family member, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.

Section 2.38 "Holding Company" is defined in Section 10.9.2.13 hereof.

Section 2.39 "Irrigation System" is defined in Section 16.15 hereof.

Section 2.40 "Lessee" means the person or persons, entity or entities who is the lessee under a lease of all or any part of a Unit. The term Lessee shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee.

Section 2.41 "Lot" means a plot of land subject to this Declaration which is designated for single-family residential use pursuant to the Town Documents and described as a "Lot" on the Plat, together with all appurtenances and improvements, now or in the future, on the Lot.

Section 2.42 "Management Agreement" means any contract or arrangement with a person or entity that provides management services entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance and management of the Common Area and/or the performance of Functions.

Section 2.43 "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement.

Section 2.44 "Map" or "Maps" means and includes any engineering survey or surveys of a portion of the Property (whether titled as a map, plat or otherwise and whether in two or three dimensions) locating any Units on the Property and/or subdividing a Development Parcel into additional Units, together with other drawings or diagrammatic plans and information regarding any portion of the Property as recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. The definition of "Map" in this Declaration shall include those documents defined as a "map" and a "plat" under the Act.

Section 2.45 "Member" shall mean every person who or entity that holds membership in the Association.

Section 2.46 "Mitigation and Monitoring Plan" means that certain Wetland Habitat Mitigation and Monitoring Plan, Brightwater Club Residential and Golf Project, Gypsum, Eagle County, Colorado, prepared for the U.S. Army Corps of Engineers, Corps File No. 2003 75274, dated June 14, 2004, as amended or otherwise modified from time to time.

Section 2.47 "Neighborhood" means each separately developed residential area within Brightwater Club in which the Owners of Lots have and demonstrate to the Executive Board that they have common interests other than those common to all members of the Association. There shall be a minimum of ten (10) Lots in a Neighborhood.

Section 2.48 "Operation and Management Plan" means that certain Operation and Management Plan For Wetland Mitigation Areas, Brightwater Club Residential and Golf Project, Gypsum, Eagle County, Colorado, prepared for the U.S. Army Corps of Engineers, Corps File No. 2003 75274, as amended or otherwise modified from time to time.

Section 2.49 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit, but excludes those having such interest in a Unit merely as security for the performance of an obligation, unless and until such person has acquired fee simple title to the Unit pursuant to foreclosure or other proceedings.

Section 2.50 "Person" means a natural person, a corporation, a partnership, a trustee or any other legal entity.

Section 2.51 "Plat" means the Filing 1 Plat, and all supplements and amendments thereto, including those which further subdivide portions of the Property, including Development Parcels, into Units.

Section 2.52 "Preserve Area" means that certain real property designated as the "Preserve" pursuant to the Preserve Declaration, as amended or modified from time to time, which generally consists of four (4) spring-fed lakes including .50 acres of wetland habitat within Brightwater Club and is approximately 11 acres.

Section 2.53 "Preserve Declaration" means that certain Declaration of Protective and Restrictive Covenants For "The Preserve" Brightwater Club Residential and Golf Development, Gypsum, Eagle County, Colorado, recorded in the records of the Clerk and Recorder of Eagle County, Colorado on June 3, 2005, at Reception No. 918093, and all supplements and amendments thereto.

Section 2.54 "Private Amenities" means certain real property and any improvements and facilities thereon which may be, but are not necessarily, located adjacent to, in the vicinity of, or within the Property, which are privately owned and operated by persons other than the Association (including, without limitation, the Declarant, the District and/or the Club) for recreational, commercial and related purposes, on a membership basis or otherwise, and may include, without limitation, the Golf Course, trails, a nature center, wellness center, a private nordic skiing trails, a fishing area and facilities, a swimming area and facilities, a tennis facility and amenities, a restaurant and other commercial space, other restaurants and shops, and any and all other property, facilities, equipment or amenities added from time to time. If owned by a party other than the Association, the Preserve Area is or shall also be among the Private Amenities.

Section 2.55 "Project" or "Projects" means one or more buildings, together with the real property on which such building(s) are located, on any portion of the Property which is submitted to a

condominium, planned community or other common interest community by a Project Declaration and the associated Map.

Section 2.56 "Project Association" or "Project Associations" means the association(s), if any, formed for the purpose of representing Owners within a particular Project.

Section 2.57 "Project Declaration" or "Project Declarations" means each recorded declaration creating a Project within the Property.

Section 2.58 "Property" means and refers to property subjected to this Declaration from time to time.

Section 2.59 "PUD" means that certain Valagua Planned Unit Development, approved by the Town Council of the Town on March 22, 2005 pursuant to resolution number 2005-7, as amended, supplemented, or otherwise modified from time to time.

Section 2.60 "Real Estate Transfer Assessment" means an assessment levied pursuant to Section 10.9 below.

Section 2.61 "Real Estate Transfer Assessment Rate" means the rate established pursuant to Section 10.9 from time to time.

Section 2.62 "Roads" means all roads, private rights-of-way or public rights-of-way, including Valley Road identified on the Filing 1 Plat (if and only to the extent of Association's maintenance responsibility therefor), which are maintained by the Association, including any curb and gutter, common landscaping, paved roads, snow maintenance and storage facilities, and drainage areas within the Property as shown on the Filing 1 Plat.

Section 2.63 "Sharing Ratio" means an equal allocation of Assessments among all Units subject to this Declaration from time to time.

Section 2.64 "Special Assessment" means an assessment levied pursuant to Article 10, Section 10.7 below.

Section 2.65 "Subdivision Improvements Agreement" is defined in Section 16.15 hereof.

Section 2.66 "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 Eagle 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 2.67 "Supplemental Declaration" means an instrument which subjects any Annexed Property to this Declaration or withdraws any real property subject to this Declaration, as more fully provided in Article 14 below.

Section 2.68 "Supplemental Plat" means a subdivision plat of any Development Parcel or which may depict Annexed Property becoming subject to this Declaration through a Supplemental Declaration, as more fully provided in Article 14 below.

Section 2.69 "Town" means the Town of Gypsum, Colorado.

Section 2.70 "Town Documents" means those certain development approvals for Brightwater Club granted by the Town including, without limitation, the Annexation Agreement, PUD, Plat and Subdivision Improvements Agreement, along with any other documents recorded from time to time in the real property records of Eagle County, Colorado.

Section 2.71 "Unit" means the fee simple interest in and to any subdivided parcel of real property subject to this Declaration, whether currently existing or created by subsequent resubdivision of the Property. In addition, each Lot and each Development Parcel shall be an individual Unit as defined herein.

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

### **ARTICLE 3 NAME, DIVISION INTO UNITS**

Section 3.1 Name. The name of the project is Brightwater Club. The project is a Planned Community pursuant to the Act.

Section 3.2 Association. The name of the Association is Brightwater Club Property Owners Association. 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 Number of Units. The number of Lots initially annexed to this Declaration is 102, and the number of Development Parcels initially annexed to this Declaration is seven (7). Declarant reserves the right for itself and any Successor Declarant to expand the Property by subdividing Development Parcels into Units to include up to 523 additional Units and to expand the Common Area.

Section 3.4 Identification of Units. The identification number of each Unit is shown on the Plat or shall be shown on the Map of the Project which contains or creates the Unit.

Section 3.5 Description of Units.

3.5.1 Each Unit shall be inseparable and may be developed for residential purposes in accordance with the restrictions applicable to a particular Unit contained in the Plat and in the Town Documents. No Lot shall be further subdivided; however, any Development Parcel may be subdivided and re-subdivided in accordance with the Town Documents and this Declaration. Notwithstanding the foregoing and Section 16.4 below, Declarant, its successors and specific assigns (which assigns may be more than one, including, without limitation, developers of certain portions of the Property) may further subdivide certain Development Parcels, all as more particularly described herein, on the Plat or any Supplemental Plat, and in the Town Documents.

3.5.2 Title to a Unit 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 Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Unit. The parties, if more than one, having the ownership of a Unit shall agree between 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 Unit in which they own an interest.

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

Lot/Parcel \_\_\_\_\_, Brightwater Club, Filing \_\_\_\_\_, according to the Plat thereof recorded \_\_\_\_\_, 200\_\_ at Reception No. \_\_\_\_\_, and the Declaration of Covenants, Conditions, Restrictions and Easements for Brightwater Club recorded \_\_\_\_\_, 200\_\_ at Reception No. \_\_\_\_\_, as supplemented, in the Office of the Clerk and Recorder of Eagle County, Colorado (with the appropriate information inserted in place of the blanks set forth above).

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

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

3.5.6 As provided below, each Lot shall be used and occupied solely for dwelling or lodging purposes, and each Development Parcel shall be held solely for the purpose of resubdivision of such Development Parcel into Units and Common Area, as appropriate, in conformance with the Town Documents and this Declaration. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing, Declarant, for itself and its successors, assigns, and/or designees (which assigns may be more than one, including, without limitation, developers of certain portions of the Property), hereby retains a right to maintain on any Unit or Units sales offices, management offices or model residences at any time or from time to time so long as Declarant, or its successors or assigns continues to own an interest in a Unit. The use by Declarant, or its successors, specific assigns or designees, of any Lot as a model residence, office or other use shall not affect the Lot's designation as a separate Lot.

#### **ARTICLE 4 ASSOCIATION FUNCTIONS AND DUTIES**

Section 4.1 Property Maintenance Function. The Association shall provide for the care, operation, management, maintenance, improvement, repair and replacement of Common Area, if any. 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 Unit or any improvements within Brightwater Club, subject to the rights of the District and/or the Club. The Executive Board shall be the sole judge as to the appropriate maintenance, operation and management of the Common Area and other areas of the Property consistent with intent of this Declaration. Without limiting the generality of the foregoing, the Association is specifically authorized to (a) maintain, repair, improve and replace fences along the boundary of the Property and (b) maintain, improve and landscape along (and in the median of) Valley Road (as shown on the Filing 1 Plat), in each case, in accordance with the terms and conditions of the Town Documents and certain other agreements with neighboring landowners, and the cost of such maintenance, repair, improvement and replacement shall be a Common Expense.

Section 4.2 Safety Function. The Association may provide safety services within Brightwater Club, including but not limited to, security personnel and security systems. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY.



NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR FOR THE INEFFECTIVENESS OF ANY SECURITY MEASURE UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, LESSEES AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS EXECUTIVE BOARD, DECLARANT AND ANY SUCCESSOR DECLARANT, DO NOT REPRESENT OR WARRANT THAT ANY BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE DESIGN GUIDELINES ESTABLISHED BY THE DECLARANT MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE; NOR THAT BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL TENANTS, GUESTS, LESSEES AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, TO IMPROVEMENTS CONSTRUCTED ON UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS EXECUTIVE BOARD AND COMMITTEES, DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, LESSEE OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Section 4.3 Transportation Function. The Association may provide for the operation, maintenance and repair of one or more transportation systems within Brightwater Club. The Association, as it deems necessary, may extend such transportation systems to areas outside of Brightwater Club to provide transportation to and from Brightwater Club. Such transportation systems may include, but are not limited to, bus or automobile systems and any other facilities deemed necessary or appropriate for the proper operation and maintenance of such systems.

Section 4.4 Vehicular Access Limitation Function. The Association may provide control over vehicular access to Brightwater Club which it deems necessary or desirable for the privacy, health, safety or welfare of persons residing, visiting or doing business within Brightwater Club. Such function may include, without limitation, constructing, operating and maintaining access road control gates (at such location(s) as the Association may from time to time determine to be appropriate), restricting non-commercial vehicular traffic within Brightwater Club except for Owners, and their Lessees, Guests, invitees or visitors who have overnight accommodations at, and restricting commercial vehicular traffic within, Brightwater Club. All Owners may be required to keep the Association informed of all persons who have overnight accommodations at such Owner's property in order to appropriately enforce the rules and regulations which may be adopted by the Association.

Section 4.5 Roads. The Association shall maintain and keep the Roads in good repair, and the cost of such maintenance shall be funded as provided in Article 10. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement of the Roads (which shall include without limitation snow removal services). The Association's responsibility for Road maintenance under this Section applies whether or not such Roads lie on a Common Area, on an easement created by this Declaration across any Unit, or some other area of the Property. 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. This Function may not be delegated by the Association at any time to the District or any other party without prior written consent of Declarant, which Declarant may withhold in its sole and absolute discretion. Valley Road (as shown on the Filing 1 Plat) is a public right of way, and the Town has maintenance responsibility therefor.

Section 4.6 Marketing Function. The Association may provide suitable and continuing programs to promote Brightwater Club as a desirable recreational community, including but not limited to, stimulating and coordinating major events, advertising and placing articles in news and other media, establishing uniform standards for promotional programs of individual members, involvement in lecture tours, encouraging groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, and providing and operating reception and information centers for the accommodations of guests and visitors. The Association may undertake or fulfill its obligations hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the above-referenced activities.

Section 4.7 Solid Waste Collection and Disposal Function; Recycling. The Association may provide for the collection, removal, disposal and/or recycling of all solid waste in Brightwater Club, including but not limited to, the construction, operation and maintenance of a central waste collection, disposal and/or recycling facility. The Association shall have the power to adopt, amend and enforce rules and regulations to provide for the orderly collection, disposal and/or recycling of such waste.

Section 4.8 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 Brightwater Club and may cooperate with the appropriate governmental body regarding enforcement of animal control regulations.

Section 4.9 Environmental Function. The Association may monitor air, soil and water quality in Brightwater Club to determine trends and to detect violations of federal, state or local environmental laws. Neither Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be required to undertake such monitoring, nor shall be liable to any third party for any action which they take, or failure to act, in connection with the inspection or monitoring of air, soil or water quality in Brightwater Club.

Section 4.10 Exterior Maintenance Function.

4.10.1 Subject to Article 15, each Owner shall be responsible for all landscaping, maintenance and repair of his Unit and of the exterior and interior of his residence, including all fixtures and improvements and all utility lines and equipment located therein or in, on or upon his Unit and is required to maintain the Unit and any improvements located thereon in a first class manner consistent with the Community-Wide Standard. No Owner shall unreasonably damage the value of other Units such as by sub-standard upkeep of such Owner's Unit or any improvements located on the Unit in a manner inconsistent with the Community-Wide Standard.

4.10.2 Owners shall be responsible for all maintenance and repairs of utility service lines, connections, facilities and related equipment providing service only to such Owner's Unit (and to no other Unit) and the residence and other buildings and improvements constructed upon such Unit, and which are located within such Owner's Unit, with such responsibility to begin at the point where a utility provider ceases responsibility for maintenance and repair for a particular utility. All such expenses and liabilities shall be borne solely by the Owner of such Unit.

4.10.3 If any Owner fails to maintain its Unit or any Project Association fails to maintain its Project or related improvements or property or fails to perform any acts of maintenance or repair required under this Declaration, the Association may provide, by action of the Design Review Board or of the Executive Board, exterior maintenance and repair upon such property after one (1) days' notice of such failure to the Owner of such Unit or the applicable Project Association; provided, however, in the event the nature of the exterior maintenance and repair is such that it can not reasonably be cured within one (1) day, the Owner or applicable Project Association shall have a reasonable time to cure the same as determined by the Executive Board. 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 Unit shall be assessed against the Owner of such Unit and shall be a lien and obligation of the Owner pursuant to Article 10. The cost of such maintenance or repairs of a Project shall be assessed against all Owners of Units within such Project and shall be a lien and obligation of such Owners pursuant to Article 10. 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 or Project Association, to enter upon such Unit or Project during reasonable hours on any day. The Association and the Design Review Board and their designees are hereby granted an irrevocable license over all property in Brightwater Club to inspect (in a reasonable manner) property within Brightwater Club in order to determine whether any maintenance or repair is necessary under this Section.

4.10.4 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 Unit or Project 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 Unit or Project or improvements or portion thereof.

Section 4.11 Right to Make Rules and Regulations. The Association Documents establish a framework of affirmative and negative covenants, easements, and restrictions that govern Brightwater Club. Within that framework, the Executive Board and the Owners must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology. Therefore, this Section establishes procedures for establishing, modifying and expanding the rules and regulations for the Association. This Section is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Executive Board may adopt by resolution, nor to administrative policies which the Executive Board may adopt to interpret, define or implement the rules and regulations. At the request of any Owner, the Association will provide, without cost, a copy of the then current rules and regulations.

4.11.1 The Association shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable within Brightwater Club with respect to any Unit, Common Area or Function of the Association, and to implement the provisions of this Declaration, including but not limited to, rules and regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate animals; to protect wildlife; to regulate signs; to regulate use of any and all Common Area to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within Brightwater Club; and to protect and preserve property and property rights. All rules and regulations shall comply with the Association Documents.

4.11.2 Subject to the terms of this Section and the Executive Board's duty to exercise business judgment and reasonableness on behalf of the Association and the Owners, the Executive Board may establish, modify, cancel, limit, create exceptions to, or expand the rules and regulations of the

Association. The Executive Board shall send notice to all Owners concerning any proposed action at least fifteen (15) days prior to an Executive Board meeting at which such action is to be considered. The notice shall include the text of the new rule or an explanation of any changes to be made to the rules and regulations. Owners shall have a reasonable opportunity to be heard at an Executive Board meeting prior to such action being taken. Any amendment of or addition to the rules and regulations may be made by a majority of the Directors.

4.11.3 Owners may cancel changes to the rules and regulations approved by the Executive Board or may modify, cancel, limit, create exceptions to, or expand any other rules and regulations, upon the affirmative vote of more than sixty-seven percent (67%) of the total voting interest in the Association at a special meeting of the Owners called for that purpose. If the Executive Board receives a petition, signed by the number of Owners necessary to call a special meeting, for the purpose of voting on changes to the rules and regulations proposed by the Executive Board, the proposed changes will be ineffective until after such meeting is held and will be subject to the outcome of such meeting.

4.11.4 Except as may be set forth in this Declaration (either initially or by amendment) or in the initial rules and regulations of the Association, all rules and regulations shall comply with the following provisions:

4.11.4.1 The rules and regulations shall be reasonable and shall be uniformly applied.

4.11.4.2 The rights of Owners to display religious and holiday signs, symbols, and decorations on or inside their Units of the kinds normally displayed in or on similar properties, shall not be abridged except that the Association may adopt time, place and manner restrictions with respect to displays visible from outside the Unit. No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

4.11.4.3 No rule shall interfere with the Owners freedom to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

4.11.4.4 No rule shall interfere with the activities carried on within the confines of any Unit, except that the Association may prohibit activities not normally associated with property restricted to residential use. The Association may also restrict or prohibit any activities that create monetary costs for the Association or other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, or that create an unreasonable source of annoyance.

4.11.4.5 No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area or from denying use privileges to those who are delinquent in paying Assessments, abuse the Common Area, or violate the Association Documents. This provision does not affect the right to increase the amount of Assessments as provided in Article 10.

4.11.4.6 No rule shall require an Owner to dispose of personal property that was in a Unit prior to adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

4.11.4.7 No rule or action by the Association shall unreasonably impede Declarant's right to develop Brightwater Club and market and sell Units.

The limitations in Sections 4.11.4.1 through 4.11.4.7 shall only limit rulemaking authority exercised under this Section 4.11 and shall not apply to amendments to this Declaration adopted in accordance with Article 17.

Section 4.12 Charges for Use of Common Area. Notwithstanding the provisions of Section 4.14, the Association may establish charges for use of Common Area to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section shall be reasonable and shall be uniformly applied, except such charges may reasonably differentiate between reasonable categories of Units, Projects, Neighborhoods, Owners, Lessees, Guests or members of the general public. Each Owner, Lessee, Guest and member of the general public shall be obligated to and shall pay such charges for use.

Section 4.13 Charges for Functions. Notwithstanding the provisions of Section 4.14, the Association may establish charges for providing any service as required or permitted by any Function on a regular or irregular basis to a Project Association, Neighborhood, Owner, Lessee, Guest or member of the general public to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Project Associations, Neighborhoods, Units, Owners, Lessees, Guests or members of the general public. Each Project Association, Neighborhood, Owner, Lessee, Guest and member of the general public shall be obligated to and shall pay any such charges for such services.

Section 4.14 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 Area or Functions.

Section 4.15 Right to Dispose of Common Area; Third Party Rights in Common Area. Subject to applicable provisions of the Act, including those that require Owner approval prior to the conveyance or encumbrance of Common Area, the Association shall have the full power and authority to sell, lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Area; provided, however, that any such conveyance or encumbrance shall be subject to all easements to which the Common Area is subject at the time of such sale or conveyance. The Association shall be entitled to contract with third parties, including, without limitation, the District, the Club, the Town, other residential or recreational associations or individuals, allowing such persons the use and enjoyment of all or a portion of the Common Area under such terms and for such charges as may be acceptable to the Executive Board.

Section 4.16 Governmental Successor. Subject to applicable provisions of the Act, any Common Area and any Function may be turned over to a quasi-governmental entity including the District and/or any other special district or metropolitan district which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate.

Section 4.17 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 4.18 Implied Rights of the Association. Except to the extent limited by the terms and provisions of this Declaration, the Association may exercise any right or privilege given to it expressly in this Declaration or given to it by law and shall have and may exercise every other right, privilege, power and authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

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

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

4.18.3 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;

4.18.4 subject to the provisions of Article 19, 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 Brightwater Club;

4.18.5 establish the Design Review Board as provided in Article 15 and regulate the construction, reconstruction and alteration of any improvements located or to be located on the Property;

4.18.6 make contracts and incur liabilities;

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

4.18.8 cause additional improvements to be made as part of the Common Area, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Units, Neighborhoods, Owners, Lessees, Guests and members of the general public, including without limitation, streets, mountain access trails, paths, walkways, snowmelt systems, sidewalks and bicycle trails; any facilities necessary or useful for transit purposes, including means of transportation to and from Brightwater Club; bus stops and related structures and signage; mailbox structures; newspaper racks; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements useful or necessary to benefit the Owners or to provide services of the Association;

4.18.9 acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property;

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

4.18.11 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;

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

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

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

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

4.18.16 perform any Function by, through or under contractual arrangements, licenses, or other arrangements with any governmental, quasi-governmental or private entity as may be necessary or desirable, including the District and pursuant to the terms and restrictions set forth herein; and

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

Section 4.19 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 Unit for the benefit of all other Units and the Common Area.

Section 4.20 Third-Party Use and Access. The Association may grant such rights in the Common Area as the Executive Board deems appropriate to the Club in order to facilitate its use and operation of the Club and the Golf Course, including the rights of access granted to the Club as more fully set forth on the Plat and related documents. The rights which may be granted hereunder may be subject to whatever conditions the Executive Board deems necessary and/or appropriate, including, without limitation, appropriate indemnifications.

Section 4.21 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 Area or any Functions undertaken by the Association pursuant to this Declaration.

Section 4.22 Owner's Negligence. In the event that the need for maintenance, repair or replacement of all or any portion of the Common Area is due to the grossly negligent, reckless or willful act or omission of an Owner or any Owner's Guests or Lessees, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. To the extent that the need for maintenance, repair or replacement is due to the negligent act or omission of an Owner or an Owner's Guests or Lessees, then such Owner shall be liable to the Association for the amount of any applicable insurance deductible(s) and for any amounts in excess of insurance proceeds; provided, however, if such area is not covered by insurance, the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. If the Owner fails to repay any applicable 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 Section, and such expenses shall automatically become a Default Assessment determined and levied against such Owner's Unit, enforceable by the Association in accordance with Article 10 below.

Section 4.23 Enforcement of Association Documents. Subject to the provisions of Article 19, the Association, or any aggrieved Owner may take judicial action against any Owner to enforce compliance with the rules and regulations of the Association 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. The Executive Board may also impose sanctions, after notice and hearing as provided in the bylaws of the Association, for any noncompliance with the Association Documents. Such sanctions that may be imposed by the Executive Board shall include, without limitation:

4.23.1 Imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. In the event that any occupant, Guest or Lessee of a Unit violates the Association Documents and a fine is imposed, the fine shall first be assessed against the Owner of such Unit;

4.23.2 Suspending an Owner's right to vote on Association matters;

4.23.3 Suspending any person's right to use the Common Area and all facilities contained therein; provided however, nothing herein shall authorize the Executive Board to limit ingress to or egress from a Unit;

4.23.4 Suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

4.23.5 Exercising self-help or taking action to abate any violation of the Association Documents in a non-emergency situation;

4.23.6 Requiring an Owner, at the Owner's own expense, to remove any structure or improvement on such Owner's Unit in violation of the Association Documents and to restore the Unit to its previous condition consistent with the Community-Wide Standard and, upon failure of the Owner to do so, the Executive Board or its designee shall have the right to enter the Unit, remove the violation and restore the Unit to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

4.23.7 Levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Association Documents.

4.23.8 In addition, the Executive Board may take the following enforcement actions to ensure compliance with the Association Documents without the necessity of compliance with the procedures set forth in the bylaws or Article 19:

4.23.8.1 Exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

4.23.8.2 Bringing suit at law or equity to enjoin any violation or to recover monetary damages or both.

4.23.9 All remedies set forth in the Association Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Association Documents, if the



Association prevails it shall recover all costs, including attorneys' fees, expenses and court costs, reasonably incurred in such action, and such costs shall be included in the award at trial.

4.23.10 The decision to pursue enforcement action in any particular case shall be left to the Executive Board's discretion, except that the Executive Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Executive Board may determine that, under the circumstances of a particular case:

4.23.10.1 The Association's position is not strong enough to justify taking any or further action;

4.23.10.2 The covenant, restriction or rule being enforced is, or is likely to be construed as, unenforceable or inconsistent with applicable law;

4.23.10.3 Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

4.23.10.4 That it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, rule or regulation.

Section 4.24 Cooperation with Other Associations. The Association may contract or cooperate with the Project Associations or with other homeowners' associations, special districts or municipalities, the County of Eagle, Colorado, the Town or other 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 4.25 Cooperation with Project Associations. The Executive Board may assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations and other documents governing the applicable Project, and the Association shall cooperate with each Project Association so that each of those entities may most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time the Association and the various Projects Associations may use the services each of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for the Owners of Units in the particular Project or by an item in the Project Association's budget which shall be collected through the Assessments of such Project Association and remitted to the Association. If a Project Association fails, neglects or is unable to perform a duty or obligation required by its Project Declaration or other Project documents, then the Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Association may charge the Project Association a reasonable fee for the performance of such functions.

Section 4.26 Neighborhoods. Owners of no less than ten (10) Lots may petition the Executive Board to be a Neighborhood in order to request that the Association provide a higher level of service or

special services for the benefit of Lots in such Neighborhood upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood. Even if the Executive Board determines that the Lots constitute a Neighborhood, the Executive Board shall have the option, in its sole discretion, whether to provide the requested services. All requests must be in compliance with the Town Documents and the Design Guidelines. The cost of such services, if provided, shall be assessed against the Lots within such Neighborhood as part of the annual Assessment for such Neighborhood pursuant to Article 10.

Section 4.27 Wildlife. The Association shall have the right and the obligation to adopt and enforce rules and regulations regarding wildlife on or about the Property and Owner standards and requirements regarding the same, including but not limited to requiring each Unit to have bear-resistant or bear-proof trash receptacles and prohibiting certain bird and animal feeders on Unit. Any Owner in violation of the terms of such rules and regulations shall be responsible for any costs and expenses incurred by the Association to enforce the same. Any such amount shall be a Default Assessments and shall become a lien against such Owner's Unit pursuant to Section 10.8 below.

Section 4.28 Community Function. The Association shall have the right to organize and/or host community events and other activities on the Property, including block parties on the Roads, for the benefit of the Owners and Brightwater Club.

Section 4.29 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 9, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS OR THE PROJECT ASSOCIATIONS 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 AREA TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS OR THE PROJECT ASSOCIATIONS.

Section 4.30 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 Area through their membership in the Association.

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

Section 5.1 The Association. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The vote for such Unit 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 Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Unit which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right.

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 Unit and then only to the purchaser or mortgagee of his Unit.

Section 5.3 Membership and Voting. When more than one person holds an interest in any Unit, all such persons shall be Members. Each Unit shall be allocated one (1) vote on Association matters.

Section 5.4 Declarant Control. Notwithstanding anything to the contrary provided for herein, Declarant shall be entitled during the Declarant Control Period to appoint and remove the members of the Association's Executive Board and officers of the Association, subject to the following restrictions:

5.4.1 Not later than sixty (60) days after conveyance by Declarant of twenty-five percent (25%) of the total number of Units that may be created under this Declaration, including all Units permitted to be created in the future by subdivision of the Development Parcels, to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant.

5.4.2 Not later than sixty (60) days after conveyance by Declarant of fifty percent (50%) of the total number of Units that may be created under this Declaration, including all Units permitted to be created in the future by subdivision of the Development Parcels, to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board shall be elected by Owners other than Declarant.

5.4.3 Not later than the termination of the Declarant Control Period, the Owners shall elect an Executive Board at least a majority of whom shall be Owners other than Declarant or designated representatives of Owners other than Declarant.

5.4.4 Declarant may voluntarily relinquish such power set forth in this Section 5.4 evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, but in such event, Declarant may at its option require that specified actions of the 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 5.5 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 obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Unit for the benefit of all other Units and for the benefit of Declarant's adjacent properties.

Section 5.6 Owner's and Association's Address for Notices. All Owners of each Unit shall have one (1) and the same mailing address to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.

If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address.

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

Executive Board  
Brightwater Club Property Owners Association  
c/o Robertson & Marchetti, P.C.  
28 Second Street, Suite 213  
Edwards, Colorado 81632

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or by regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

## **ARTICLE 6 PROPERTY RIGHTS**

Section 6.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- 6.1.1 This Declaration and any other applicable covenants;
- 6.1.2 Any restrictions or limitations contained in any deed conveying such property to the Association and the Preserve Declaration if the Preserve Area is part of the Common Area;
- 6.1.3 The right of the Executive Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- 6.1.4 The right of the Executive Board to impose reasonable membership requirements and charge reasonable membership, admission, use or other fees for the use of any facility situated upon the Common Area;
- 6.1.5 The right of the Executive Board to permit the use of any facilities situated on the Common Area by persons other than Owners, their families, Lessees and Guests;
- 6.1.6 The right and obligations of the Declarant and the Association, acting through its Executive Board to restrict, regulate or limit Owners' and occupants' use of the Common Area for environmental preservation purposes, including, without limitation, wildlife corridors, winter wildlife ranges and natural wildlife habitat; and
- 6.1.7 Any governmental or quasi-governmental rules, regulations or statutes.

Any Owner may extend his or her right to use and enjoyment to the members of his or her immediate family, Lessees, Guests and social invitees, as applicable, subject to reasonable regulation by the Executive Board. An Owner who leases his or her Unit shall be deemed to assign all such rights to the Lessee of such Unit.

Section 6.2     Expansion; Annexation. The Declarant may, but shall not be obligated to, expand Brightwater Club by the further subdivision of Development Parcels into Units and/or additional Common Area, all as more fully set forth in Article 14 below. In addition, from time to time, Declarant may, but shall not be obligated to, expand the Common Area by written instrument recorded with the Clerk and Recorder of Eagle County, Colorado, all as more fully set forth in Article 14 below. The Preserve Area may be part of such annexation as further described herein.

Section 6.3     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 public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect.

Section 6.4     Private Amenities. Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

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

FURTHER, ALL PERSONS, INCLUDING ALL OWNERS, ARE HEREBY ADVISED THAT THE ASSOCIATION WILL NOT OWN THE GOLF COURSE OR ANY PORTION OF THE GOLF FACILITIES (INCLUDING, WITHOUT LIMITATION, PUTTING COURSE, PUTTING GREENS, DRIVING RANGE OR OTHER PRACTICE FACILITIES). IT IS CONTEMPLATED THAT ALL PRIVATE AMENITIES SHALL BE OWNED BY THE CLUB, THE DISTRICT OR DECLARANT AND ADMINISTERED BY THE CLUB, THE DISTRICT OR DECLARANT.

The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (i) the sale to or assumption of operations by an independent entity, (ii) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of the entity that owns and operates any Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, or (iii) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of Declarant or others. No consent of the Association or any Owner shall be required to effectuate such a transfer or conversion.

Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

Neither the Declarant, the Association nor the owner or operator of the Golf Course or any other Private Amenity guarantees or represents that any view over and across the Golf Course or any other Private Amenity from adjacent Units will be preserved without impairment. The owners of the Golf Course or any other Private Amenity, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Golf Course or any other Private Amenity from time to time. In addition, the owner of

the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course or any other Private Amenity may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 6.5 Preserve Area. Declarant hereby reserves the right to (but is not obligated to) (a) convey the Preserve Area (whether in fee or by easement) and/or (b) delegate maintenance responsibility for the Preserve Area to the Association, Club, District and/or any other entity. In the event Declarant conveys ownership interest in the Preserve Area (whether in fee or by easement) to the Association, the Preserve Area shall be Common Area and shall be included in the definition of "Common Area" hereunder. In such event or in the event the Declarant delegates only the maintenance responsibility of the Preserve Area to the Association, (a) the Association shall comply with the covenants and restrictions of the Preserve Declaration, the Mitigation and Monitoring Plan and the Operation and Management Plan and perform all obligations of the declarant thereunder, and (b) the costs incurred by the Association with respect to the ownership and/or maintenance of the Preserve Area shall be a Common Expense.

## **ARTICLE 7 MECHANIC'S LIENS**

Section 7.1 No Liability. If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit 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 Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Area or any Unit other than the Unit of such Owner with any mechanic's lien or other lien or encumbrance whatsoever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Area or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is hereby expressly denied.

Section 7.2 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 Area or against any other Owner's Unit 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 cancelled 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.

Section 7.3 Association Action. Labor performed or materials furnished for the Common Area, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no lien may be effected against an individual Unit or Units.

## **ARTICLE 8 PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT**

Section 8.1 Owners' Easement of Enjoyment. Every Owner has a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every

Unit. Certain third persons, including, without limitation, members of the Club, may also have access to the Common Area. Every Owner shall have a non-exclusive easement over (a) the roadways within Brightwater Club to provide access to and from his Unit, and (b) any official trail systems developed on the Property pursuant to the terms hereof. No Owner shall hinder or permit his Guest to hinder reasonable access by any other Owner and his Guest or other permittees to the Units.

Section 8.2 Recorded Easements. The Property shall be subject to all easements, licenses, covenants and restrictions as shown on any recorded Plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration. All easements and licenses to which the Property is presently subject are set forth on Exhibit B. In addition, the Property is subject to those easements set forth in this Article.

Section 8.3 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and specific assigns, and their respective officers, agents, employees, contractors, and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Area, together with the right to store materials on the Common Area, to build and maintain temporary walls, and to make such other use of the Common Area as may be reasonably necessary or incident to any construction or 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 Brightwater Club by the Owners.

Section 8.4 Utility Easements.

8.4.1 Blanket Utility Easement Area. 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 the Property, excepting only those portions lying within the Building Envelopes (the "Blanket Utility Easement Area"), 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 District and its successors and 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 and their respective officers, agents, employees, contractors and assigns, for the purposes of (i) construction, operation, maintenance, repair and/or replacement (and access to said facilities for such purposes) of water, sewer, 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, pump stations and other facilities related to the provision of any of such utility services, and storm drainage facilities and ditches, (ii) for the drainage of water from other lands, and (iii) for the ingress and egress of construction and maintenance vehicles and equipment, whether or not relating to the utilities and facilities described herein. The grant, reservation and declaration of this Blanket Utility Easement Area shall not obligate Declarant to construct any or all of the aforementioned utilities, nor is this easement limited to utilities which benefit one or more of the Units.

8.4.2 Road Easement Area. 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 the Blanket Utility Easement Area, 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 and their respective officers, agents,

employees, contractors and assigns, for the purposes of grading, construction, operation, maintenance, repair and/or replacement of the Roads. The grant, reservation and declaration of this road easement area shall not obligate Declarant to construct any or all of the aforementioned Roads, nor is this easement limited to Roads which benefit one or more of the Units.

8.4.3 Further Grants. Declarant reserves the right to grant and convey to the local water supplier, electric company, natural gas supplier, cable television supplier, communications systems supplier and/or suppliers of any other utilities or systems whatsoever easements over, across, under and through any portion of the Blanket Utility Easement Area and through such portions of the Property located within the Building Envelopes as are reasonably necessary to install such utility services to service any other Unit or other property. Should any entity furnishing a service covered by the general easement granted herein request a specific easement by separate recordable document, Declarant shall have the right to grant such easement over the Blanket Utility Easement Area without conflicting with the terms hereof and regardless of the record title holder of the respective Unit.

Section 8.5 Reservation for Annexation. Declarant hereby reserves for the benefit of the 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 District and its successors and assigns, the Association and its successors and assigns, and/or for Owners in all future phases of Brightwater Club and their respective officers, agents, employees, and assigns, an easement and right-of-way over, upon and across the Property, excepting only those portions lying within the Building Envelopes, for construction, utilities, drainage, and ingress and egress from any Annexed Property, and other properties abutting and contiguous to the Property and any Annexed Property, and for use of the Common Area as may be reasonably necessary or incident to the construction of improvements on the Units or other improvements on the Property or any Annexed 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 Brightwater Club 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 Eagle County, Colorado.

Section 8.6 General Maintenance Easement. An easement is hereby reserved to Declarant for the benefit of the Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by or under common control with Declarant) and Declarant's successors and specific assigns, and granted to the District and its successors and assigns, the Association, and any member of the Executive Board or the Managing Agent, and their respective officers, agents, contractors, 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 8.7 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power 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. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment. No Owner shall have any rights against the Association or Declarant or any of their officers or Directors with respect thereto except in the case of fraud or gross negligence.



Section 8.8 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to the members of his immediate family, his Guests and Lessees, but only in accordance with and subject to the limitations of the Association Documents.

Section 8.9 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 8.10 Easement for Golf Course.

8.10.1 Every Unit and the Common Area are burdened with an easement for the benefit of the members, guests and invitees of the Club permitting golf balls unintentionally to come upon the Units or Common Area in the vicinity of the Golf Course and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of a Unit or Common Area to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Association, Club and Declarant and their respective successors, the owner and successors-in-title to the Golf Course, or assigns; any Successor Declarant, or any other Person or entity submitting property to this Declaration; any builder, golf course designer or contractor (in their capacities as such); any officer, director, agent, lender, partner, shareholder, member or employee of any of the foregoing, or any officer, director, agent, lender shareholder, member or employee of any partner.

8.10.2 The owner of the Golf Course, its respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary for the improvement, operation, maintenance, repair and replacement of the Golf Course, including without limitation, the right of the Golf Course and Club maintenance and operation equipment to travel upon the Roads.

8.10.3 Those portions of the Property adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for any damage or injury resulting from overspray or the exercise of this easement.

8.10.4 The owner(s) of the Golf Course, its respective successors and assigns, shall have a perpetual, non-exclusive easement of access over the Property for the purpose of retrieving golf balls from the Common Area lying within the range of golf balls hit from the Golf Course.

8.10.5 Declarant hereby reserves to itself, its successors and assigns, and grants to the Association, a blanket easement upon, across, over and under those Units and portions of the Common Area lying adjacent to the Golf Course, if any, with the exception of the Building Envelopes, for the purpose of blending the grading of the Golf Course with such Units or Common Area and for grass sodding and landscaping of such borders of the golf course as Declarant, its successors and assigns, or Association deems necessary or desirable. The Owner of any such Unit is prohibited from disturbing such grading, sodding and landscaping as are placed on such Owner's Unit pursuant to this easement.

Section 8.11 Easements for Club and District Activities. The Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by or under common control with Declarant) and Declarant's successors and specific assigns and their respective officers, agents, employees, and assigns, the Club and the District and their members (regardless of whether such members are Owners hereunder), their respective guests, invitees, and the employees, agents, contractors, including those who do not own property within Brightwater Club, and designees of the Declarant, the Club and the District shall at all

times have a right and nonexclusive easement of access and use over all Roads reasonably necessary to travel from/to the entrance to the Property and from/to the Private Amenity(ies) and any other facilities owned, managed or controlled by the Declarant, the Club or the District, respectively, and over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the improvement, operation, maintenance, repair, and replacement of the Private Amenity(ies) and any other facilities owned, managed or controlled by the Declarant, the Club or the District. Without limiting the generality of the foregoing, (i) members of the Declarant, the Club and the District, their respective guests, invitees, and the employees, agents, contractors, and designees of the Club and the District and permitted members of the public shall have the right to park their vehicles or maintenance equipment on the roadways located within the Property at reasonable times before, during and after functions held by the Club or the District or at the Private Amenities, which may include, without limitation, golf tournaments or other community activities; and (ii) permitted members of the public (as set forth in the Town Documents or as otherwise permitted by the Club) shall at all times have the right and nonexclusive easement of access and use over all Roads reasonably necessary to travel from/to the entrance to the Property and from/to the Golf Course only at such times as those parties are entitled to use the Private Amenities.

Section 8.12 Easements for Encroachments. To the extent that any improvement or utilities whether presently existing or hereinafter constructed within the Common Area (including, without limitation, any portion of the Roads) encroaches on any Unit, 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 8.13 Declarant's Right of Assignment. Declarant reserves the right to assign all or any portion 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 Eagle 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 8.14 Ditch Easements. There are hereby created, granted and reserved for the use and benefit of the Declarant and its successors and assigns perpetual, non-exclusive easements within the ditch easements as shown on the Filing 1 Plat or any Supplemental Plat, and if not shown on a Filing 1 Plat then along the courses of said ditches and laterals and in the locations of the irrigation systems, ditches, ditch laterals, ponds or other water diversion, conveyance, distribution, irrigation or storage facilities that may exist from time to time on the Property and Golf Course, as they may be realigned or relocated from time to time, subject to the specific provisions set forth in easement grants for any such facilities and/or on the Filing 1 Plat, or any Supplemental Plat, if any, and subject to applicable terms and conditions of any applicable ditch operation and maintenance agreements. As further set forth in Section 16.12, no Owner may construct, install, maintain or permit any fence or other improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways on the Property, (ii) any irrigation ditch or lateral or other water collection, storage or distribution system within or serving the Property, the Golf Course or any other property or the flow of water through the same, or (iii) normal drainage patterns on the Property or the Golf Course. The Association reserves the right to restrict the Owners access to the irrigation ditches located on the Property, including but not limited to constructing fences in certain locations.

Section 8.15 Utility, Water and/or Ditch Easements. There are hereby created, granted and reserved to the Declarant and its successors or assigns perpetual, non-exclusive easements over, upon,

across and under those portions of the Property that are designated "Utility Easement," "Phillips Ditch," "H.O.R. Ditch," "Stratton Ditch," "Lower McEllen Ditch," "Upper McEllen Ditch," "Wilson Ditch" and "Water Storage Easement" on the Filing 1 Plat or any Supplemental Plat. Additional ditch easements may be located on the Filing 1 Plat or any Supplemental Plat for ditch laterals and other components of the Irrigation System. Utility Easements may be used for the installation, operation, maintenance, repair, removal or replacement of underground utility lines (and related surface facilities). Ditch easements may be used for the installation, operation, maintenance, repair, removal, improvement or replacement of drainage, ditch, and irrigation systems and facilities. Water storage easements may be used for the installation, operation, maintenance, repair, removal, improvement or replacement of water storage facilities. Except as may otherwise be provided in any County Document between Declarant and the Town or in any other separate agreement between Declarant and a utility or water supplier or in any applicable ditch operation and maintenance agreement and associated easements and easement agreements, the party causing the disturbance shall be obligated to restore, repair, reseed and/or relandscape any area disturbed by the exercise of these easement rights to as close to its original condition as possible, as promptly as possible following the completion of any work within a utility, water storage and/or ditch easement.

Section 8.16 Aesthetic Ditch Easements. Except for the H.O.R. Ditch, Stratton Ditch, Phillips Ditch, Lower McEllen Ditch, Upper McEllen Ditch and Wilson Ditch (which are identified on the Filing 1 Plat), there are hereby created, granted and reserved for the benefit of the Association and all Unit Owners and occupants, perpetual, non-exclusive aesthetic easements along the courses of the various irrigation ditches that traverse the Property, in the present locations of said ditches or as they may be realigned or otherwise created, for purposes of visually enjoying said ditches as water features within the Property. These easements shall be subject at all times to the legal rights of the owners of said ditches and of the water rights entitled to flow therein, and Declarant makes no representations or warranties that any of said ditches will continue to exist in their present location, or if they do exist, that any particular level of water will continue to flow therein. Furthermore, the beneficiaries of these aesthetic easements shall have no right to alter or interfere with said ditches in any way.

## **ARTICLE 9 INSURANCE AND FIDELITY BONDS**

Section 9.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available:

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

9.1.2 Commercial 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, maintenance and use of the Common Area 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 \$1,000,000 for any injuries or death sustained by any person in any single occurrence (and \$2,000,000 in the aggregate), and at least \$1,000,000 for property damage resulting from each occurrence. Such policy will include coverage for contractual liability, liability for non-owned and hired automobiles, and such other risks as are customarily covered with respect to developments similar

to Brightwater Club in construction, location and use. The Owners or the Project Associations will be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

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

Section 9.2 Cancellation. If the insurance described in Section 9.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 9.3 Policy Provisions. Insurance policies carried pursuant to Section 9.1 must, to the extent available, provide that:

9.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

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

9.3.3 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

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

Section 9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 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 9.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association and Owners are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 9.5 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 9.6 Insurer Obligation. To the extent the following is available, an insurer that has issued an insurance policy for the insurance described in Section 9.1 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 nonrenewal 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 9.7     Repair and Replacement.**

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

9.7.1.1     The regime created by this Declaration is terminated;

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

9.7.1.3     Ninety percent of all Owners vote not to rebuild; or

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

9.7.2     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 Brightwater Club, 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 Units.

**Section 9.8     Common Expenses.** Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

**Section 9.9     Fidelity Insurance.** Fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its Directors, officers, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two months' current Assessments plus reserves as calculated from the current budget of the Association. In addition, if responsibility for handling funds is delegated to a Managing Agent, such bond may be obtained for the Managing Agent and its officers, employees and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

**Section 9.10     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 9.11     Other Insurance.** The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

**Section 9.12     Insurance Obtained by Owners or Project Associations.** Each Owner or Project Association (as set forth in the applicable Project Declaration) shall obtain and at all times maintain

physical damage and liability insurance for such Owner's or Project Association's benefit, at such Owner's or Project Association's expense, covering the full replacement value of the improvements upon the Owner's Unit and the common area or common elements of the Project, personal property and personal liability insurance in a limit of not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to property, and if higher limits shall at any time be customary to protect against tort liability such higher limits shall be carried. In addition, an Owner or Project Association may obtain such other and additional insurance coverage on the Unit and residence and the common area or common elements of the Project as such Owner or Project Association in their sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner or Project Association shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner or Project Association shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners or other Project Associations, including Declarant, should Declarant be the Owner of any Unit. No Owner or Project Association shall obtain separate insurance policies on the Common Area.

All Owners and Project Associations are required to maintain on file copies of all such current policies with the Association to evidence their obligations hereunder and to facilitate recovery of all appropriate awards or proceeds by the Association.

## **ARTICLE 10 ASSESSMENTS**

Section 10.1 Obligation. Each Owner, including Declarant, by accepting a deed for a Unit, 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 Area and to perform the Functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration; (iii) Default Assessments which may be assessed against a Unit 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 or as a result of enforcing the provisions of the Association Documents and (iv) the Real Estate Transfer Assessment to perform the Functions of the Association; provided, however, the Declarant is exempt from payment of the Real Estate Transfer Assessment pursuant to Section 10.9.2.2. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or abandoning or leasing his Unit.

Section 10.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of Brightwater Club, for the improvement and maintenance of the Common Area and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.

Section 10.3 Budget. Within ninety (90) 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 of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as provided in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the

noticed meeting by more than seventy (70%) of all Owners. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Owners. The Executive Board shall levy and assess the Association's annual Assessments in accordance with the annual budget.

Section 10.4 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall collect at the time of the sale of each Unit an amount equal to three (3) months Annual Assessments due from time to time. The Association shall maintain the working capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the Common Area for the benefit of the members of the Association, subject to the budget approval procedures of Section 10.3 above. Such payments to this fund shall not be considered advance payments of Annual Assessments. The unused portion of the working capital contribution shall be returned to each Owner upon the sale of his Unit, provided that the purchaser of the Unit has contributed the required working capital to the Association.

Section 10.5 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 10.3 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area; expenses of management; taxes and special governmental assessments pertaining to the Common Area 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 Area; wages; common water and utility charges for the Common Area; 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 Area 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 10.6 Apportionment of Annual Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Units 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, (a) the Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 9, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 9; and (b) in the event a specific item in the Association's budget may more directly benefit a certain Project, Neighborhood (including, without limitation, any budget item which arises as the result of a request for additional services by a Neighborhood as provided in Section 4.26), Unit or group of Units in excess of its assessment obligation, or in the event the Association has provided services to such Project, Neighborhood, Unit or group of Units in excess of those provided to other Projects, Neighborhoods or Units within the Property, the rate of Assessments levied with respect to such item or services may be modified to reflect such additional benefit at the sole and exclusive

discretion of the Executive Board; provided, however, that such rate of Assessments shall be uniform within each Project, Neighborhood, or group of Units benefited and shall not be used to circumvent the Assessment apportionment formulas as set forth in this Declaration. Costs and expenses unique to the operation of a Project Association shall be assessed by the Project Association for such Project and shall not be assessed under this Declaration. The Sharing Ratio of each Unit is an equal allocation among all Units subject to this Declaration from time to time.

Section 10.7 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 Units in the same manner as described with respect to Annual Assessments in Section 10.6 above. Special Assessments shall be based on a budget adopted in accordance with Section 10.3 provided that, if necessary, the Association may adopt a new budget pursuant to Section 10.3 prior to levying a Special Assessment. Such Special Assessment(s) shall be due and payable as determined by the Executive Board.

Section 10.8 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association, which is (a) the obligation of an Owner, (b) incurred by the Association on behalf of the Owner pursuant to the Association Documents, or (c) incurred by the Association in connection with the enforcement of any provision of or in remedying any violation of this Declaration, or of any Supplemental Declaration, the Articles, Bylaws, Association Rules or Design Guidelines (or any approvals granted by the Design Review Board), by such Owner or Owners, their Guest(s) or Lessee(s), or their agents, employees or contractors, shall be a Default Assessment and shall become a lien against such Owner's Unit 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. Finally, and in addition to the foregoing, a Default Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, a Supplemental Declaration, the Articles, Bylaws, or the Association Rules, but only after the Owner(s) to be so fined have been provided with notice and hearing, as provided in the Bylaws. Default Assessments shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owner(s) of such Default Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

Section 10.9 Real Estate Transfer Assessment. Upon the occurrence of any transfer, as defined below, the transferee under such transfer shall pay to the Association a real estate transfer assessment (the "Real Estate Transfer Assessment") equal to the fair market value, as defined below of the Unit subject to transfer, multiplied by the hereinafter described Real Estate Transfer Assessment Rate, which rate shall be imposed and determined from time to time by the Executive Board, in its discretion and by an act of a majority of the Directors. Any such Real Estate Transfer Assessment must be placed of record by the Association in the Office of the Clerk and Recorder of Eagle County, Colorado, prior to the enactment of such levy. As of the date of this Declaration, the "Real Estate Transfer Assessment Rate" shall be zero percent (0.0%). In no event shall the Real Estate Transfer Assessment Rate exceed two percent (2.0%) of the fair market value of the property being transferred.

#### 10.9.1 Definitions.

10.9.1.1 Transfer. For purposes of this Section 10.9, "transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, assignment, permitted lease or other transfer of beneficial ownership of any Unit, including but not limited to (i) the



conveyance of fee simple title to any Unit (including any conveyance arising out of an installment land contract or a lease containing an option to purchase), (ii) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation (other than Declarant) which, directly or indirectly, owns one or more Units, and (iii) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity (each referred to hereinafter as a "Business Association") which, directly or indirectly, owns one or more Units, but "transfer" shall not mean or include the transfers excluded under Subsection 10.9.2.

10.9.1.2 Transferee. For purposes of this Section 10.9, "transferee" means and includes all parties to whom any interest in a Unit passes by a transfer, and each party included in the term "transferee" shall have joint and several liability for all obligations of the transferee under this Section.

10.9.1.3 Fair Market Value. In the case of a transfer that is in all respects a bona fide sale, "fair market value" of the Unit subjected to transfer shall be the consideration, as such term is defined below, given for the transfer. In the case of a transfer that is a long-term lease not exempt under Subsection 10.9.2 or is otherwise not in all respects a bona fide sale, fair market value of the Unit subjected to transfer shall be determined by the Association. A transferee may make written objection to the Association's determination within fifteen (15) days after the Association has given notice of such determination, in which event the Association shall obtain an appraisal, at the transferee's sole expense, from a real estate appraiser of good reputation, who is qualified to perform appraisals in Colorado, who is familiar with Eagle County real estate values, and who shall be selected by the Association. The appraisal so obtained shall be binding on both the Association and the transferee. The above provisions to the contrary notwithstanding, where a transferee does not make a full report of a transfer within fifteen (15) days after the time required by this Section for making such report, the transferee shall be deemed to have waived all right of objection concerning fair market value, and the Association's determination of such value shall be binding.

10.9.1.4 Consideration. For purposes of this Section 10.9, "consideration" means and includes the total of money paid (or purchase price) and the fair market value of any property delivered, or contracted to be paid or delivered, in return for the transfer of any Unit, and includes any money or property paid or delivered to obtain a contract right to purchase any Unit, and the amount of any note, contract indebtedness (including without limitation, obligations which could be characterized as contingent land gain), or rental payment reserved in connection with such transfer, whether or not secured by any lien, mortgage, or other encumbrance, given to secure the transfer price, or any part thereof, or remaining unpaid on the property at the time of transfer, whether or not assumed by the transferee. The term "consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements in favor of the United States, the State of Colorado, or a municipal or quasi-municipal governmental corporation or district.

10.9.2 Exclusions. The Real Estate Transfer Assessment shall not apply to any of the following, except to the extent that they are used for the purpose of avoiding the Real Estate Transfer Assessment:

10.9.2.1 any transfer to the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the State of Colorado;

10.9.2.2 any transfer to or from Declarant, a Successor Declarant who is specifically granted this right, or the Association;

10.9.2.3 any transfer, whether outright or in trust, that is for the benefit of the transferor or his or her relatives, but only if there is no more than nominal consideration for the transfer. For the purposes of this exclusion, the relatives of a transferor shall include all lineal descendants of any grandparent of the transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust;

10.9.2.4 any transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith;

10.9.2.5 any transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution;

10.9.2.6 any transfer made (i) by a majority-owned subsidiary to its parent corporation or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no consideration other than issuance, cancellation or surrender of the subsidiary's stock; or (ii) by a partner, member or a joint venturer (each, a "Business Association Member") to a Business Association in which the Business Association Member has not less than a 50 percent interest, or by a Business Association to a Business Association Member holding not less than a 50 percent interest in such Business Association, in each case for no consideration other than the issuance, cancellation or surrender of the interests in the Business Association, as appropriate; or (iii) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Unit is transferred generally pro rata to its shareholders, and no consideration is paid other than the cancellation of such corporation's stock; or (iv) by a Business Association to its Business Association Members, in connection with a liquidation of the Business Association or other distribution of property to the Business Association Members, if the Unit is transferred generally pro rata to its Business Association Members, and no consideration is paid other than the cancellation of the Business Association Members' interests; or (v) to a corporation or Business Association where such entity is owned in its entirety by the persons transferring the Unit and such persons have the same relative interests in the transferee entity as they had in the Unit immediately prior to such transfer, and no consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the transferee entity; or (vi) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the transferor(s) and the transferee(s) are and remain under common ownership and control as determined by the Executive Board in its sole discretion applied on a consistent basis; provided, however, that no such transfer or series of transactions shall be exempt unless the Executive Board finds that such transfer or series of transactions (x) is for no consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the transferor or transferee, as appropriate, (y) is not inconsistent with the intent and meaning of this Subsection 10.9.2.6, and (z) is for a valid business purpose and is not for the purpose of avoiding the obligation to pay the transfer Assessment. In connection with considering any request for an exception under Subsection 10.9.2.6(vi), the Executive Board may require the applicant to submit true and correct copies of all relevant documents relating to the transfer setting forth all relevant facts regarding the transfer, stating that in their opinion the transfer is exempt under this Subsection 10.9.2.6(vi), and setting forth the basis for such opinion;

10.9.2.7 any transfer made solely for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses, and any exchange of Units between Declarant and any original purchaser from Declarant of the one or more Units being transferred

to Declarant in such exchange. To the extent that consideration in addition to previously purchased Units is paid to Declarant in such an exchange, the additional consideration shall be a transfer subject to Assessment. To the extent that Declarant, in acquiring by exchange Units previously purchased from Declarant, pays consideration in addition to transferring Units, the amount of such additional consideration shall be treated as reducing the original assessable transfer and shall entitle an original purchaser from Declarant, who exchanges with Declarant Units previously purchased from Declarant, to a refund from the Association of the amount of the transfer Assessment originally paid on that portion of the original transfer;

10.9.2.8 any transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable transfer in a series of transactions which includes only one effective transfer of the right to use or enjoyment of a Unit;

10.9.2.9 any lease of any Unit (or assignment or transfer of any interest in any such lease) for a period of less than thirty (30) years;

10.9.2.10 any transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a deed given in lieu of foreclosure;

10.9.2.11 the subsequent transfer(s) of a Unit involved in a "tax free" or "tax deferred" trade under the Internal Revenue Code wherein the interim owner acquires property for the sole purpose of reselling that property after the trade. In these cases, the first transfer of title is subject to transfer Assessment, and subsequent transfers will only be exempt as long as a transfer Assessment has been paid in connection with the first transfer of such Unit in such exchange;

10.9.2.12 the transfer of a Unit to an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended (or any comparable statute), provided that the Executive Board specifically approves such exemption in each particular case;

10.9.2.13 any transfer made by a corporation or other entity, for consideration, (1) to any other corporation or entity which owns 100 percent of its equity securities (a "Holding Company"), or (2) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, 100 percent by such Holding Company;

10.9.2.14 any transfer from a partially-owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where consideration is paid for, or in connection with, such transfer; however, unless such transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the transferee in the transferor immediately prior to the transfer. For example, if corporation A owns 60 percent of corporation B, and corporation B owns 100 percent of corporation C and corporation C conveys a Unit to corporation A for \$200,000, 60 percent of the transfer Assessment would be exempt and a transfer Assessment would be payable only on \$80,000 (i.e., 40 percent of the \$200,000 consideration); and

10.9.2.15 the consecutive transfer of a Unit wherein the interim owner acquires such Unit for the sole purpose of immediately reconveying such Unit, but only to the extent there is no consideration to the interim owner and such interim owner receives no right to use or enjoyment of such Unit, provided the Executive Board specifically approves such exemption in each particular case. To the extent that consideration is paid to, or for the benefit of, the interim owner, the additional consideration

shall be a transfer subject to Assessment. In these cases, the first transfer of title is subject to the transfer Assessment and subsequent transfers will only be exempt as long as a transfer Assessment has been paid in connection with the first transfer of such Unit in such consecutive transaction and only to the extent there is no consideration to the interim owner.

**Section 10.10 Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Annual, Special, or Default 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:

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

10.10.2 Assess an interest charge from the date of delinquency at the yearly rate of three points above the prime rate charged by the Association's bank, or such other rate as the Executive Board may establish;

10.10.3 Suspend the voting rights of the Owner in the Association during any period of delinquency;

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

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

10.10.6 Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit 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 attorney's fees incurred in connection with the enforcement of the lien.

The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. While a Unit 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 Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Unit had it not been acquired by the Association.

**Section 10.11 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments.** By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

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

10.11.2 To the extent permitted under the Act, after taking into account the superiority of a certain amount of assessment liens permitted by Section 38-33.3-316(2) of the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens; and

With respect to the foregoing subpart 10.10.2, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in Section 10.10 above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees as provided in this Article 10, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Section 10.10 above and except as provided in Section 10.14 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.12 Personal Obligation. The amount of any Assessment chargeable against any Unit 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 Unit 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.

Section 10.13 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, except as provided in Section 10.11 and Section 10.14, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 10.14 below.

Section 10.14 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 Managing Agent or the Association's registered agent, any Owner or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with

respect to such Unit. 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 Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

## **ARTICLE 11 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 9 upon their damage or destruction as provided in Article 12, or a complete or partial taking as provided in Article 13 below. 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 12 DAMAGE OR DESTRUCTION**

Section 12.1 The Role of the Executive Board. Except as provided in Section 12.6, 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 9, 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 9 is sometimes referred to as the "Association-Insured Property").

Section 12.2 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 12 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 12.3 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 the Town for the Brightwater Club project. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from 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 Section 10.7 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 12.5 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 Unit, if any, 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 12.6 Decision Not to Rebuild Common Area. If Owners representing at least ninety percent (90%) of the total votes in the Association and all directly adversely affected Owners agree in writing not to repair and reconstruct improvements within the Common Area (except with respect to the Roads) 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 Area by the Association in a neat and attractive condition; provided, however, in the event such decision is made during the Declarant Control Period, the same shall require the approval of the Declarant. In the event the Roads in Brightwater Club are damaged, the Roads shall be repaired or rebuilt. Any remaining insurance proceeds shall be distributed in accordance with the Act.

## **ARTICLE 13 CONDEMNATION**

Section 13.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area 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 13.2 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 Area 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 Area on which improvements have been constructed, then, unless within sixty 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 Area 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 12 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 Unit among the Owners, as their interests appear.

Section 13.3 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 Section 12.5 above.

## **ARTICLE 14 ANNEXATION AND WITHDRAWAL**

### **Section 14.1 Reservation of Annexation and Withdrawal Rights.**

14.1.1 Declarant reserves the right for itself and any Successor Declarant to create additional Units by the subdivision of Development Parcels into Units and thereby expand the Property to include up to 523 additional Units without consent or approval of the Owners and to expand the Common Area.

14.1.2 Subject to those restrictions set forth in Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to annex unspecified real property to Brightwater Club and subject the same to the provisions of this Declaration (the "Annexed Property").

Section 14.2 Supplemental Declarations and Supplemental Plats. Any expansion of Brightwater Club by the further subdivision of any Development Parcel into additional Units shall be accomplished automatically upon the filing of the Supplemental Plat that creates the Units, at which time all such Units shall become separate Units pursuant to this Declaration. The Sharing Ratio of Units shall be updated by the Association at such time, but no Supplemental Declaration shall be required to effect such expansion. Any annexation of any Annexed Property may be accomplished by the filing for record by Declarant in the Office of the Clerk and Recorder of Eagle County, Colorado, of one or more Supplemental Declarations and, if the real property being subject to this Declaration by such Supplemental Declaration has not been previously platted in a plat recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, of a Supplemental Plat depicting such Annexed Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the Units and other real property, if any, to be included in the annexation, together with any covenants, conditions, restrictions and easements particular to such property. The expansion and/or annexation may be accomplished in stages by successive supplements or in one supplemental expansion and/or annexation. Declarant shall not be obligated to expand Brightwater Club beyond the number of Units initially submitted to this Declaration or beyond the number of Units submitted to this Declaration from time to time.

Section 14.3 Expansion of Definitions. In the event of such expansion or annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units submitted to the Declaration prior to the expansion, plus any additional Units added by, if necessary, a Supplemental Declaration or Declarations and, if necessary, Supplemental Plat or Supplemental Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.



**Section 14.4    Declaration Operative on New Units.**

14.4.1 The new Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon recording of the Plat that creates Units within a Development Parcel or placing the Supplemental Declaration and, if necessary, the Supplemental Plat(s) depicting the Annexed Property of public record in the Office of the Clerk and Recorder real estate records of Eagle County, Colorado.

14.4.2 It is contemplated that additional Units may be created under or committed to this Declaration, but Declarant and any Successor Declarant shall have no affirmative obligation to annex any additional Units to this Declaration or to further subdivide any Development Parcel to create additional Units. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are created under or annexed to this Declaration in accordance with these provisions relating to enlargement thereof.

**Section 14.5    Effect of Annexation.**

14.5.1 Upon the creation or inclusion of additional Units under this Declaration by the recording of the Plat that creates Units within a Development Parcel or filing of a Supplemental Declaration(s) and, if necessary, Supplemental Plat(s) thereof, the Sharing Ratio applicable to a Unit shall automatically be adjusted in accordance with the formula for determining the Sharing Ratios described in this Declaration.

14.5.2 Notwithstanding any creation or inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit created in the Annexed 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 the Plat that creates Units within a Development Parcel or recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

**Section 14.6    Termination of Annexation and Development Rights.** The rights reserved to the Declarant for itself, its successors and assigns for the creation of additional Units within the Development Parcels and the annexation and development of any Annexed Property ("Annexation and Development Rights") shall expire thirty-five (35) years from the date of recording this Declaration, unless terminated earlier pursuant to the terms and provisions of the Act, or unless the Annexation and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the Annexation and Development Rights by Declarant.

**ARTICLE 15  
DESIGN GUIDELINES AND REVIEW BOARD**

**Section 15.1    Design Review Board and Guidelines.** There is hereby established a Design Review Board (the "Design Review Board"), which will be responsible for the establishment and administration of Design Guidelines to facilitate the purpose and intent of this Declaration.

**Section 15.2    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, repair 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. In addition, the Design Review Board shall have the authority to establish, cancel, modify and enforce rules and regulations relating to construction activities undertaken within Brightwater Club.

Section 15.3 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, sealants, stains, 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 Town Documents and other restrictions 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.

Section 15.4 Design Guidelines. The Design Guidelines may include, among other things, at the sole discretion of the Design Review Board, the restrictions and limitations set forth below:

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

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

15.4.3 Designation of the building site on a Unit and establishing the maximum developable area of the Unit.

15.4.4 Minimum and maximum square foot areas of living space that may be developed on any Unit.

15.4.5 Landscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the type and use of plants, and other practices benefiting the protection of the environment, conservation of water (including regulations required to enforce the water restriction provisions of 16.15 and the Annexation Agreement and other Town Documents), aesthetics and architectural harmony of Brightwater Club.

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

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

different Design Guidelines to apply to different portions of or Neighborhoods within Brightwater Club at the discretion of the Design Review Board.

Section 15.5 Design Review Board Membership. The Design Review Board will be composed of not less than three (3) persons nor more than five (5) persons. The Design Review Board 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 Units comprising the Property are sold and Declarant no longer has the right to annex additional property to this Declaration pursuant to Article 14, 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.

Section 15.6 Organization and Operation of Design Review Board.

15.6.1 The term of office of each member of the Design Review Board, subject to Section 15.5, will be one 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 of a member, a successor may be appointed as provided below.

15.6.2 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.

15.6.3 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.

15.6.4 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.

15.6.5 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 15.7 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 a third party consultant, architect or other professional 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, architect or other professional.

Section 15.8 Other Requirements. Compliance with the Association's design review process is not a substitute for compliance with Town building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

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

**Section 15.9 Limitation of Liability.** The Design Review Board will use reasonable judgment in approving 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 wrongful intent. Approval by the Design Review Board does not necessarily assure approval by the appropriate governmental body or commission for the Town. 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, 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 wrongful intent in the performance of his duty as a member of the Design Review Board, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

**Section 15.10 Enforcement.**

15.10.1 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 Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Unit to determine whether the improvements have been or are being built in compliance with the Association Documents and the plans and specifications approved by the Design Review Board.

15.10.2 Before any improvements on a Unit may be occupied, the Owner of the Unit will be required to request and obtain a temporary or final 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 Unit 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.

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

15.10.4 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:

15.10.4.1 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.

15.10.4.2 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 Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove, repair, replace or reconstruct any improvement constructed, reconstructed, refinished, altered or maintained in violation of these covenants or take such other action as is necessary to cure the violation. The Owner of the improvement will immediately reimburse the Association for all expenses incurred in connection with such action by the Association. If the Owner fails to reimburse the Association within thirty (30) days after the Association gives the Owner notice of the expenses, the 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 10.

15.10.4.3 All improvements commenced on the Property will be prosecuted diligently to completion and will be completed within twelve (12) months after commencement, unless an exception is granted in writing by the Design Review Board. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required eighteen (18) month 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 determine) to be charged against the Owner of the Unit until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Executive Board that such abandonment is for circumstances beyond the Owner's control. Such charges will be a Default Assessment and lien as provided in Article 10.

Section 15.11 Binding Effect. The actions of the Design Review Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it or with respect to any other matter before it, will be conclusive and binding on all interested parties.

## **ARTICLE 16**

### **PROPERTY USE RESTRICTIONS AND ACKNOWLEDGEMENTS**

Section 16.1 General Restrictions. Subject to Declarant's rights under Section 16.3, the Property will not be used for any purpose other than as set forth in these covenants, as permitted by any applicable ordinances of the Town 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.

16.1.1 Building Envelopes. No structures or other improvements of any kind shall be constructed or allowed to exist on any Unit except within the area described and shown on the Plats as

"Building Envelope" ("Building Envelope"), except for (i) driveways, entrance monuments, historical structures and trails, all as approved by the Design Review Board, and (ii) Roads, trails and utility improvements to be constructed hereunder by or at the instance of Declarant, unless a variance is obtained from a majority of the Design Review Board and Executive Board and from the Town, and the Town Documents are appropriately amended. Declarant reserves the right, as to any Unit(s) of which it is the record owner, to amend the Building Envelope of such Unit(s) by executing and filing for record an amendment to this Declaration and Plat, which amendment(s) need be signed by Declarant only.

16.1.2 Use of Units. Subject to Section 16.7, which permits certain business uses of a Unit, and Section 3.5.6, which permits model residences and offices under certain circumstances, each Unit may be used only for residential purposes in accordance with the restrictions applicable to a particular Unit contained in the Plat and in the Town Documents.

16.1.3 Excavation. No excavation will be made except in connection with improvements approved as provided in these covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land which results in a removal of earth, rock, trees or other substance at a depth of more than twelve (12) inches below the natural surface of the land.

16.1.4 Antennae. To the extent allowed under Federal Communications Commission regulations and other applicable laws in effect from time to time, 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.

16.1.5 Animals and Pets. No Owner shall keep, raise or breed any animals, livestock, horses or poultry of any kind on any portion of the Property, except dogs, cats or other household pets (the kind and number of which may be regulated, permitted or prohibited from time to time by the Association Rules). Notwithstanding the foregoing, in no event shall an Owner, Guest or Lessee permit his dog, cat or other household pet or permitted horse to access the Preserve Area. Each Owner shall comply with all applicable leash laws and shall have its dog on a leash when it is not contained on his Unit and is otherwise on Brightwater Club Property or Club property, including, but not limited to, the Golf Course.

16.1.6 Horses Allowed on Equestrian Lots. Notwithstanding the provisions of Section 16.1.5 above, the maximum number of horses that may be kept upon the Equestrian Lots will be established and regulated either pursuant to a separate covenant or restriction to be made of record against the Equestrian Lots or by Association Rules. Additionally, (i) such horses are kept for the personal, non-commercial use of the Owner of such Lot; (ii) all structures, including barns, fences and corrals, related to the keeping of horses on the Lot shall be approved by the Design Review Board and constructed within the Building Envelope; (iii) such horses shall be kept in a manner so as to cause no impact, whether audible, odoriferous or otherwise, upon other Lots or the Owners thereof, and shall be maintained so as to cause no nuisance; and (iv) the Association may adopt such other rules and regulations regarding the keeping of horses upon the Lots as it may deem necessary and proper.

16.1.7 Containment. Household pets, such as dogs and cats, and any permitted horses may not be permitted to run at large at any time. Those pets or horses which, in the sole discretion of the Executive Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to, the occupants of other Units or wildlife shall be removed upon request of the Executive Board as further set forth in the Association Rules. If the owner of the pet or horse fails to honor such request, the Executive Board may remove the pet.

16.1.8 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 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.

16.1.9 Construction Regulations of the Design Guidelines. All Owners and contractors will comply with the portions of the Design Guidelines regulating construction activities. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time; the conservation of landscape materials; and fire protection.

16.1.10 Blasting. If any blasting is to occur, the Design Review Board and Declarant will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the blasting. No blasting shall occur without the prior written approval of the Design Review Board. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Design Review Board will in any way release the person 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 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.

16.1.11 Temporary Structures. No temporary structures will be permitted except as may be determined to be necessary during construction and as specifically authorized by the Design Review Board.

16.1.12 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 appropriate Town agency(ies).

16.1.13 No Outside Clotheslines. No laundry or wash will be dried or hung outside on the Property.

16.1.14 Motorized Vehicles. No trucks, trail bikes, recreational vehicles, golf carts, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of three-quarter ton or less or any other motorized vehicles will be parked, stored or in any manner kept or placed on any portion of the Property except in an enclosed garage. 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.

16.1.15 Parking and Auto Repair. No automobiles or other vehicles will be parked in any street 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.

16.1.16 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 weeks or longer. A written notice describing the abandoned or inoperable vehicle and requesting its removal or storage within an enclosed garage may be personally served upon the Owner or posted on the abandoned or inoperable vehicle. If such vehicle has not been removed or stored within an enclosed garage 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 10. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may be required by Declarant or the Executive Board to be stored at a designated location or locations. "Oversized" vehicles, for purposes of this Section, will be vehicles which are too high to clear the entrance to a residential garage or too long to fit within a standard residential garage.

16.1.17 Outside Burning. There will be no exterior fires, except barbecues, outside fireplaces and braziers contained within facilities or receptacles and in areas designated and approved by the Design Review Board. No Owner will permit any condition on his Unit which creates a fire hazard or is in violation of fire prevention regulations. No Owner shall emit from his Unit any noxious or offensive smoke or fumes.

16.1.18 Noise. No exterior horns, whistles, bells or other sound devices except security devices used exclusively to protect the security of the Property or improvements, will be placed or used on any portion of the Property.

16.1.19 Lighting. All exterior lighting of the improvements and grounds on the Property, or interior lighting visible outside of any building, will be for safety purposes only and will be subject to regulation by the Design Review Board.

16.1.20 Obstructions. There will be no obstruction of any walkways or bike paths or interference with the free use of those walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests and invitees are granted nonexclusive easements to use the walkways and paths within the Property. That use will be subject to the Association rules adopted by the Executive Board from time to time.

16.1.21 House Numbers. Each dwelling unit will have a house number with a design and location established by the Design Review Board.

16.1.22 Nuisance. 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.

16.1.23 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.

16.1.24 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.



16.1.25 Leases and Overnight Rentals. No Owner may rent a Unit or residence for a term less than six (6) months in duration; provided, however, an Owner who is a current member of the Club may rent his Unit or residence to another current member of the Club for a shorter period; and provided further that the Declarant shall have the right to rent any Unit owned by Declarant, or any other Unit with the permission of the Owner thereof, to any Guest of Declarant.

Section 16.2 General Practices Prohibited. The following practices are prohibited at Brightwater Club:

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

16.2.2 Removing any rock, plant material, top soil or similar items from any property of others;

16.2.3 Use of surface water for construction;

16.2.4 Careless disposition of cigarettes and other flammable materials;

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

16.2.6 Any activity which materially disturbs, threatens or destroys the vegetation, wildlife, wetlands, 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 16.3 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 or other real property owned by Declarant, to perform such activities and to maintain upon portions of the Common Area 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 Unit, or to unreasonably interfere with the use, enjoyment or access of such Owner or his Lessees or Guests of and to his Unit. If any Owner's use under this provision is deemed objectionable by the Design Review Board, then the Design Review Board, in its sole discretion, may withdraw this permission.

Section 16.4 Partition or Combination of Lots. To the extent permitted by the applicable Project Declaration, no part of a Lot may be partitioned or separated from any other part thereof. To the extent permitted by the applicable Project Declaration, no Lots may be combined, but the Owner of two or more contiguous Lots may build one single family dwelling unit on the contiguous Lots, upon complying with all applicable requirements of the Town, and with all applicable Design Guidelines, including without limitation procedures for amending Building Envelopes set forth in 16.1.1 above and accommodating a larger dwelling unit, minimum and maximum limitations of living area that may be constructed on any given number of contiguous Lots, and measures necessary to preserve any easements reserved with respect to the contiguous Lots.

The fact that two or more contiguous Lots may be owned by one person and developed with one single family dwelling unit will not affect the number of votes or the amount of Assessments allocated to the Lots. If the Owner is required by the Town or any other governmental authority to replat the Lots in order to construct improvements thereon, the number of votes and the allocation of Assessments to the Lots after replatting will equal the sum of the votes and Assessments allocated to the Lots before replatting. Each Lot will be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association and the right to use the Common Area, and with the appropriate allocation of voting rights and liability for Assessments established for the Lot as provided in this Declaration.

Section 16.5 No Timeshare. Except for permitted leases in 16.6, no Lot may be used for the creation, by any means, of any "time share estate" as defined in C.R.S. § 38-33-110 or any other time share, interval ownership, vacation club or similar estate or interest in the Lot, whether on an equity or non-equity basis, no matter how described or classified, by which a purchaser, investor, owner, tenant, member or licensee obtains the right to exclusive use of the Lot for a period of time and subject to availability, reservation procedures, or rights of others within such program to use the Lot. As used in the preceding sentence, a "vacation club" is defined as any arrangement, formal or informal, under which persons or entities share the right to use the Lot if (a) such arrangement is adopted, imposed, marketed, sold, or managed by a party other than those persons or entities who share the right to use the Lot, or (b) such Lot is marketed for use pursuant to or subject to such arrangement. Without limiting the foregoing, no Lot may be owned by more than four co-Owners, and without limiting such four-co-Owner limit, no co-Owner of a Lot may own less than a twenty-five percent (25%) interest in such Lot. The provisions of this Section 16.5 shall specifically not be applicable to any Development Parcel until such time, and to the extent, that the Development Parcel is resubdivided into Units.

Section 16.6 Leasing. The Owner of a Unit will have the right to lease his Unit, subject to the following conditions:

16.6.1 All leases will be in writing and will be for a term not less than six (6) months, subject to the exception set forth in Section 16.1.25.

16.6.2 The lease shall be specifically subject to the Association Documents, and any failure of a tenant to comply with the Association Documents will be a default under the lease, enforceable by the Association. The lease shall contain a provision which states that it shall be subject to the Association Documents and that breach of same shall be an event of default under the Lease enforceable by the Association.

16.6.3 Any default by the Owner's tenant under any provision of this Declaration, the Bylaws or the Association Rules shall be deemed a default by the Owner thereunder and shall entitle the Association to all remedies for such default as provided in this Declaration as against the Owners and such Owner's tenant. 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 16.7 Businesses. No Owner shall conduct any business, trade, garage sale, moving sale, rummage sale or similar activity on any Unit, except in compliance with the Association Rules, which shall at minimum provide that an Owner or occupant residing on a Unit may conduct typical "home-office" business activities within the residence so long as: (a) the existence or operation of the business activity is undetectable to the senses of sight, sound or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity may be carried out within the confines of the residence and is free from regular visitation of the residence by

clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property. Without limiting the generality of the foregoing, in no event shall any Unit be used for any mechanical repair business, manufacturing business, or other similar industrial use.

This subsection shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to the development and sale of the Property, including, without limitation, the Development Parcels, or the Declarant's use of any Unit.

**Section 16.8 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, including, without limitation, the Town Documents.

**Section 16.9 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 value of the Property or any Unit or 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 (including, without limitation, attorneys' and legal assistants' fees and expenses and costs of suit) 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 10.

**Section 16.10 Damage by Owners During Construction.** Each Owner is responsible for any damage caused to roads, streets, ditches, fences, trails, natural drainage courses, utilities, Common Areas, or to other Units or improvements thereon, during the construction or alteration of improvements upon the Owner's Unit, including without limitation damage caused by any construction vehicles using the roads or streets within Brightwater Club. Damage shall include any degradation in the appearance or condition of such Common Areas, or other Units or improvements thereon. The responsible Owner, under the direction of the Design Review Board, shall promptly repair and clean up any such damage, at its sole expense. Each Owner shall also be responsible for any damage caused by utility cuts in roads, washouts and runoff damage caused by failure to properly install culverts, and to promptly repair any such damage. If the Owner fails to repair any such damage within 10 days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to perform such repairs on behalf of the Owner, and to levy a Default Assessment upon the Owner and its Unit to recover the costs thereof.

**Section 16.11 Use of the Word "Brightwater Club" or Logo.** No Person shall use the words "Brightwater Club" or any derivative of any of such name, 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. If any Owner breaches this agreement, the Declarant shall receive to immediate injunctive relief and reasonable attorneys' fees. However, Owners may use the terms "Brightwater Club" in printed or promotional matter where such term is used solely to specify that particular property is located within Brightwater Club and the Association shall be entitled to use the word "Brightwater Club" in its name.

**Section 16.12 No Obstruction.** There shall be no obstruction of any easements or drainage, irrigation or water feature systems or the Irrigation System located upon the Property, or any interference

with the use thereof, except such obstruction or interference as may be reasonably required in connection with the construction, maintenance or repair thereof. No Owner shall construct, install, maintain or permit any fence or other improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways or Irrigation System on the Property, (ii) the Irrigation System or its components including without limitation, any irrigation ditch or lateral or other water collection, storage or distribution system within or serving the Property or the Golf Course or property down ditch of the Property or the flow of water through the same, or (iii) normal drainage patterns on the Property or the Golf Course, subject always to the rights of owners of ditches and other water rights and the requirements of the Design Review Board and subject to the terms and conditions of applicable ditch operation and maintenance agreements and associated easements and easement agreements. The Association shall promptly take such action as may be necessary to abate or enjoin any such obstruction or interference, and shall have the right to enter upon a Unit for purposes of removing the same, and any costs incurred by the Association in connection with such abatement, injunctive or corrective activities shall be assessed to the responsible Unit Owner or Owners in the form of a Default Assessment.

Section 16.13 No Interference with Waterways or Drainage or Irrigation Systems. No Unit Owner shall construct, install, maintain or permit any fence or other improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways within Brightwater Club, (ii) any irrigation ditch or lateral or other water collection, storage or distribution system within or serving Brightwater Club or the Golf Course, or (iii) normal drainage patterns within Brightwater Club or the Golf Course, subject always to the rights of owners of ditches and other water rights and the requirements of the Design Review Board.

Section 16.14 No Individual Water Wells or Individual Sewage Disposal Systems. No individual water wells, and no cesspools, septic tanks or other individual sewage disposal systems, shall be drilled, constructed, maintained or permitted to remain within Brightwater Club, except such water and/or septic systems as may be installed by Declarant or Declarant's successor, assign or agent or the Association to serve Brightwater Club.

Section 16.15 Irrigation Systems, Ditches, Laterals, Ponds, and Water Use Obligations. Declarant hereby discloses that certain irrigation systems, ditches, ditch laterals and ponds are currently located or may be constructed within ditch and irrigation easement areas located upon (a) certain Units, (b) upon Common Areas, and/or (c) within the Golf Course (collectively referred to as the "Irrigation System"). Declarant further discloses that as of the date of this Declaration, the ownership of any and all water rights carried or to be carried in said Irrigation System is vested in the Declarant, or in other owners, and Declarant has no obligation to transfer ownership of any of such water rights to any Unit Owner or the Association. The water rights owned by the Declarant have been or may be conveyed to the owner of the Golf Course and/or the Association. In no event shall the Association or any Owner be entitled to the right of use of the Irrigation System or any water flowing through said Irrigation System, except pursuant to a conveyance, written agreement or license with Declarant, another owner thereof, or an assignee of Declarant, or pursuant to an operation and maintenance agreement between the owner of the Golf Course and the Association. Furthermore, in no event shall any Owner be entitled to install irrigation facilities, to divert or use water from the Irrigation System or to make modifications to the Irrigation System for diversion or use purposes. In addition, in no event shall any Owner or the Association obstruct or impede the flow of water through the Irrigation System.

Some facilities of the Irrigation System convey water to other owners of water rights along easements reserved for such facilities. The rights and obligations of some of the other owners of water rights are set forth in those certain ditch operation and maintenance agreements that may be filed of record from time to time and are reserved in easements on the Plat or easement agreements otherwise

separately recorded. The rights of Owners and the Association are subject to the terms and conditions of such ditch operation and maintenance agreements, easements, and easement agreements.

The Association shall be responsible for irrigating designated portions of the Common Areas, and roadway shoulders, and for maintaining the portion of the Irrigation System that is owned by the Association. The owner of the Golf Course shall be responsible for irrigating the Golf Course. All such irrigation shall be accomplished with untreated water from the Irrigation System. The owner of the Golf Course shall be responsible for the maintenance of the portions of the Irrigation System that services both the Golf Course and remaining designated lands for irrigation on the Property, unless the owner of the Golf Course and the Association agree otherwise in writing. It is understood that the Association will be responsible for paying the owner of the Golf Course for its pro rata expenses associated with the operation and maintenance of the Irrigation System. The owner of the Golf Course will bill the Association for untreated water delivered to the Common Areas and additional lands within the Property excluding the Golf Course, as indicated on the various master meters installed throughout the lands within the Property or on a pro rata basis based on the percentage of irrigated acreage irrigated by the Association and that irrigated on the Golf Course. All such expenses will be a Common Expense. There will be no irrigation of any Units through the raw water Irrigation System. All Unit irrigation will be through the municipal system and subject to those restrictions and limitations set forth in the Annexation Agreement and the Subdivision Improvements Agreement recorded July 10, 2003, as Reception No. 839983 in the official records of Eagle County, as amended, as entered into between Declarant and the Town (as amended or otherwise modified from time to time, the "Subdivision Improvements Agreement").

Each Owner is obligated to irrigate all or a portion of the Owner's Unit to the extent permitted by this Declaration or a Supplemental Declaration and the Annexation Agreement and Subdivision Improvements Agreement, and to install an underground water irrigation system that will accomplish such irrigation with municipal water provided by the Town through the municipal water system. Each Unit shall be irrigated by each respective Owner, at the sole expense of the Owner, through the installation and operation of a sprinkler system, which shall be limited to irrigation of lawns, gardens and landscaping on each Unit in accordance with Section 2.11 of the Annexation Agreement, which provides that the lesser of (a) 70 acres of the Property dedicated to residential Units or (b) eighteen percent (18%) of any single Unit may be irrigated by water provided through the Town's municipal water system. Each Owner acknowledges that this irrigation restriction shall run with the land, be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in any part of the Property, and is specifically enforceable by the Town, Association and/or Declarant.

There will be conservation and use restrictions imposed upon the Owners by the Town consistent with Town policies, rules, and regulations. The Association and Declarant hereby reserve the right to implement additional irrigation restrictions with respect to each Unit as reasonably determined from time to time. Such conservation and use restrictions may include restrictions on days and hours of irrigation. All Owners hereby assume any risk involved with respect to the Irrigation System and hereby acknowledge that the Association, the Declarant, the owner of the Golf Course, and other water right owners shall not have any responsibility or liability of any kind to any Owner who incurs any loss, damage, cost or expense arising from or relating to said Irrigation System, including, but not limited to, any loss or damage caused by flooding or the failure to deliver water. In accordance with the foregoing, such Owners, on behalf of themselves and their occupants, guests, successors and assigns, by acceptance of a deed acknowledge their assent to the provisions hereof, and hereby release Declarant, the Association, the owner of the Golf and other owners of water rights that utilize the Irrigation System and each of their officers, directors, partners, trustees, members, agents, employees, stockholders, and contractors, from and against any and all obligations, claims, demands, liabilities, costs, expenses, attorneys' fees, or causes of action of any kind whatsoever, whether arising prior or subsequent to the date

hereof, whether known or unknown, based upon, arising out of, or in any manner related to the Irrigation System.

Section 16.16 Restoration of Irrigation System in the Event of Damage or Destruction. In the event of damage to or destruction of any portion of the Irrigation System on any Unit by the Owner, the Owner thereof shall cause the damaged or destroyed Irrigation System to be promptly restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Board. Such Irrigation System shall be repaired, restored or otherwise replaced within such time frame as may be established by the Design Review Board in order for the Irrigation System to be functional and for the obligations under the ditch operation and maintenance agreements, easements, and easement agreements to be fulfilled in a timely manner.

Section 16.17 Completion and Conduct of Maintenance Improvements to Irrigation System. Declarant shall have the right throughout the Property to complete maintenance improvements to the Irrigation System as appropriate, convenient, necessary or required from time to time. Furthermore, the Declarant shall have the right to construct and complete maintenance improvements pursuant to the terms and conditions of any ditch operation and maintenance agreements and related easements and easement agreements. Furthermore, Declarant shall have the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted easements, upon or across any portion of the Property except Building Envelopes, as may be reasonably required for the completion by Declarant of the maintenance improvements to the Irrigation System and any of its components and for the operation of the Irrigation System.

Section 16.18 Acknowledgements.

16.18.1 Golf Course Hazards, Risks and Liabilities: Disclosure, Assumption of Risk, Release and Indemnification. The Golf Course and all other facilities owned by the Club or used in the operation of the Club will be used as a private golf course and related improvements, facilities and uses. By acceptance of a deed to a Unit, each Owner acknowledges and agrees that the Golf Course use enhances the value of the Unit by providing pleasant surroundings and open space for Brightwater Club. Each Owner further acknowledges (i) that the use and operation of the Golf Course involves certain risks to Brightwater Club, including but not limited to damage to property and improvements and personal injury and death caused by errant golf balls that may be hit into Brightwater Club, and (ii) that while Brightwater Club has been designed to minimize these risks to the extent reasonably possible, it would be impossible to render Brightwater Club free of all golf course-related risks. Certain of the more common hazards associated with the operation of a golf course are more particularly described in subsections 16.18.1.1 through 16.18.1.7 below (collectively the "Golf Course Hazards").

16.18.1.1 Errant Golf Balls. Owners, particularly Owners of Units abutting the Golf Course, acknowledge the inherent risk of errant golf balls and assume and accept such risk. Owners acknowledge and accept the risk that golfers may attempt to retrieve errant golf balls from Units and each Owner agrees to release and waive any claims said Owner may have as a result of such retrieval against the Declarant, its successors and assigns, the Club and the Association.

16.18.1.2 View Impairment/Privacy. Owners, including Owners of Units abutting the Golf Course, have no guarantee that their view over and across the Golf Course will be forever preserved without impairment. The Club has no obligation to the Owners to prune or not prune trees or other landscaping and the Club may change, add to or reconfigure the golf course and related facilities and improvements on the Golf Course, including structural improvements, trees, landscaping, tees, bunkers, fairways and greens, without liability or obligation to the Owners.

16.18.1.3 Pesticides and Fertilizers. Pesticides, fertilizers and other chemicals may be utilized in connection with the operation of the Golf Course and related landscaping and the Owners acknowledge, accept and assume the risks associated with the use of pesticides, fertilizers and other chemicals.

16.18.1.4 Overspray. Owners, particularly Owners of Units abutting the Golf Course, may experience "overspray" from the Golf Course irrigation system, which may spray untreated water or nutrient enhanced water, and such Owners acknowledge, accept and assume the risks associated with such "overspray".

16.18.1.5 Noise and Light; Tournaments. Owners, particularly Owners of Units in proximity to the Golf Course clubhouse, may be exposed to lights, noise or activities resulting from the use of the Golf Course for tournaments, from the use of the clubhouse for dining, entertainment and special group functions (including but not limited to music and fireworks displays), and from use of the parking lot, and such Owners acknowledge, accept and assume the risks associated with such uses.

16.18.1.6 No Access. The Owner of each Unit abutting any portion of the Golf Course, by accepting a deed to his Unit, acknowledges that the Club may not permit access to any portion of the Golf Course directly from any Unit. Such access will only be permitted through the clubhouse and at such other entry points as the Club may from time to time specifically designate. Accordingly, each Owner of a Unit abutting any portion of the Golf Course agrees not to access the Golf Course directly from his Unit (unless otherwise expressly permitted by the Club), and agrees not to permit any of his Lessees or Guests or any other person to do so.

16.18.1.7 Golf Course Maintenance. The Golf Course and related improvements and facilities require daily maintenance, including mowing, irrigation and grooming, during early morning, evening and night hours, including without limitation the use of tractors, mowers, blowers, pumps, compressors and utility vehicles. Owners, particularly Owners of Units in proximity to the Golf Course, will be exposed to the noise and other effects of such maintenance, and such Owners acknowledge, accept and assume the risks associated with such maintenance activities.

IN CONSIDERATION FOR THE ABOVE-ACKNOWLEDGED ENHANCEMENT IN VALUE, AND WITH FULL AWARENESS OF THESE AND OTHER RISKS, BY ACCEPTING THE DEED TO A UNIT EACH OWNER FOR HIMSELF AND HIS OCCUPANTS, LESSEES, GUESTS, INVITEES, LICENSEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY THE "OWNER'S RELATED PARTIES") HEREBY (I) ACKNOWLEDGES, ACCEPTS AND ASSUMES THE RISKS ASSOCIATED WITH SAID GOLF COURSE HAZARDS AND OF ANY DAMAGE TO PROPERTY OR TO THE VALUE OF PROPERTY, DAMAGE TO IMPROVEMENTS, PERSONAL INJURY OR DEATH, OR THE CREATION OR MAINTENANCE OF A TRESPASS OR NUISANCE, CAUSED BY OR ARISING IN CONNECTION WITH ANY OF SAID GOLF COURSE HAZARDS OR OTHER RISKS, HAZARDS AND DANGERS ASSOCIATED WITH THE OPERATION OF A GOLF COURSE (COLLECTIVELY THE "ASSUMED RISKS"), AND (II) RELEASES, WAIVES, DISCHARGES, COVENANTS NOT TO SUE, INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS THE DECLARANT, THE ASSOCIATION, AND THE CLUB, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, MEMBERS, AFFILIATES, EMPLOYEES, CONTRACTORS, CONSULTANTS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OF THEM, FROM ANY AND ALL LIABILITY TO THE OWNER OR OWNER'S RELATED PARTIES FOR ANY DAMAGES, LOSSES, COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES), CLAIMS, DEMANDS, SUITS, JUDGMENTS, ORDINARY NEGLIGENCE, OR OTHER OBLIGATIONS ARISING OUT OF OR CONNECTED IN ANY WAY WITH ANY OF THE

ASSUMED RISKS. THIS RELEASE IS INTENDED TO BE A COMPREHENSIVE RELEASE OF LIABILITY BUT IS NOT INTENDED TO ASSERT DEFENSES WHICH ARE PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, HOWEVER, THIS SECTION SHALL NOT LIMIT THE LIABILITY OF INDIVIDUAL GOLFERS USING THE GOLF COURSE.

The acknowledgments, assumptions of risk and agreements contained in this Section shall be deemed to run with the title to each Unit within Brightwater Club.

**16.18.2 Club Membership.** Membership in the Club is separate and independent from membership in the Association. By taking title to the Unit, each Owner hereby acknowledges that the Club (a) is not governed by the Association or any of its affiliates, (b) has separate governing documents and functions and (c) may require independent assessments and dues from time to time. Each Owner acknowledges that this Declaration does not in any way create a membership of the Club or entitle any Owner to use the Golf Course or the golf facilities.

**16.18.3 Public Access to Trails, Parking, Gypsum Creek and Hardscrabble Gulch; Fishing Restrictions.** Each Owner hereby acknowledges that (a) certain portions of the Common Area and property in the vicinity of Brightwater Club may be used by the general public for recreational purposes, which includes those who do not own property within Brightwater Club, and (b) Gypsum Creek, which runs near Brightwater Club, is not private or exclusive to Owners, but is open to the public for fishing. The general public may access the Gypsum Creek area for fishing purposes and to access open space. Each Owner, by taking title to his Unit, hereby acknowledges that public easements may exist on or near the Property that will provide public pedestrian and equestrian access to Gypsum Creek and to adjacent open space (as shown on the Filing 1 Plat or as granted by Declarant in the future) and that certain Units may be affected by said public easements. In order to preserve wildlife, open space near Gypsum Creek may be closed by the Town from December 1 through May 15 or during such other period as the Town or related government or quasi-government authority may decide from time to time. Such government authorities may also restrict fishing in Gypsum Creek. For example and without limitation, appropriate governmental authorities may from time to time restrict fishing to catch and release only and may restrict fisherman by requiring them to use only one barbless hook.

Each Owner further acknowledges that certain land lying east of the Property is dedicated to the Colorado Bureau of Land Management ("BLM"). Pursuant to Section 4.4 of the Annexation Agreement, Declarant has (or will) provide an unimproved foot trail for non-motorized public access from Valley Road to Hardscrabble Gulch (as shown on the Filing 1 Plat). Each Owner, by taking title to his Unit, hereby acknowledges that public easements may exist on or near the Property that will provide public pedestrian and equestrian access to Hardscrabble Gulch (as shown on the Filing 1 Plat or as granted by Declarant in the future) and that certain Units may be affected by said public easements. Declarant must further provide up to five (5) parking spaces for public use at such trailhead, which may be incorporated into parking for other facilities and which may be located on the Property.

**16.18.4 Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. EACH OWNER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING



MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES WITH RESPECT TO THE PROPERTY.

16.18.5 Valley Road. Each Owner, by taking title to his Unit, hereby acknowledges, agrees and consents to the inclusion of the Property within a special improvement district for the purpose of funding future road improvements of Valley Road and the immediately surrounding roads (as shown on the Plat).

Section 16.19 Ditch Easements. Each Owner, by taking title to his Unit, hereby acknowledges that certain Units are near the Ditch Easements as further described in Section 8.14 and are subject to said easements.

Section 16.20 Neighboring Agricultural Land. Each Owner, by taking title to his Unit, hereby acknowledges and understands that certain farming, ranching and other agricultural activities will be conducted on property near or adjacent to the Property and that such activities represent a unique and desirable amenity to the Property. The farming, ranching and other agricultural operations may include many year-round activities; as such, the farming, ranching and other agricultural activities may generate, pursuant to their legal and authorized operation, an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating thereto. The activities associated with the farming, ranching and other agricultural operations include, without limitation: (i) traffic congestion and/or delays on the roads within or near Brightwater Club which may arise from the movement of livestock and/or the transportation of slow-moving agricultural vehicles and equipment; (ii) activities relating to the construction, operation, improvement and maintenance of facilities necessary or useful in farming, ranching and other agricultural operations, including, without limitation, barns, houses, fences and the like; and (iii) the straying of livestock. Each Owner further acknowledges and understands that such adjacent agricultural lands may be developed in the future and may cease to be agricultural areas.

Section 16.21 Airport Facilities. Brightwater Club is located near the Eagle County Regional Airport, which the use of such airport may generate attendant noise and other inconveniences to Owners.

Section 16.22 Preserve Area Restrictions. The Preserve Area, which consists of four (4) spring-fed lakes including .50 acres of wetland habitat within Brightwater Club and is approximately 11 acres, is governed by the terms, conditions and restrictions set forth in the Preserve Declaration, the Mitigation and Monitoring Plan and the Operation and Management Plan, as they may be amended or supplemented from time to time. Restrictions set forth in such governing documents on the date of this Declaration limit the use of the Preserve Area for passive recreation including angling, birding, nature study, and pedestrian use ("walking"), consistent with the prohibition against construction of roads and trails. Hunting for waterfowl or other species shall not be allowed. Active recreation (i.e., motorized boats, rowboats, canoes, kayaks, sailboats, and other watercraft) on designated lakes 1, 2 and 3 is prohibited. Limited use of non-motorized watercraft shall be allowed on designated lake 4 during Association and Club supervised events only. Use of wetland or aquatic areas for training or trials of hunting dogs shall also be prohibited on all lakes unless approved by appropriate governmental or quasi-governmental agencies or entities, including the U.S. Army Corps of Engineers.

Section 16.23 Preserve Area. Each Owner acknowledges that in the event the Declarant delegates ownership interest in the Preserve Area to the Club or any other party other than the Association, the Preserve Area shall be included in the definition of "Private Amenities" hereunder.

## **ARTICLE 17**

### **DURATION OF COVENANTS AND AMENDMENT**

Section 17.1 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 17.2 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon approval of Owners representing sixty-seven percent (67%) or more of the total voting interest in the Association at a meeting of the Owners called for that purpose or by written consent; provided, however, that any provision of this Declaration requiring a vote of more than sixty-seven percent (67%) of the total voting interest in the Association to be effective may only be amended by a vote of the applicable aggregate voting interest stated in such provision. In addition, (a) a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to any Association Documents to the extent necessary to correct a factual error, (b) any proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, and (c) any proposed amendment during the Declarant Control Period must be approved by the Declarant in order to become effective, in addition to the approval requirements otherwise set forth herein. In addition, the Executive Board has the right to amend this Declaration pursuant to the provisions of the Colorado Revised Statutes Subsection 38-33.3-217(7). Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or the Plat to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

Section 17.3 Revocation. This Declaration shall not be revoked or terminated, except as provided in Article 13 regarding total condemnation, without the consent of Owners holding more than sixty-seven percent (67%) of the total voting interest in the Association at a meeting of the Owners called for that purpose, evidenced by a written instrument duly recorded.

Section 17.4 Recording of Amendments. Any amendment to this Declaration must be executed by the President of the Association and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, 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 or that no approval of the Owners was necessary.

## **ARTICLE 18**

### **DISTRICT**

The Association shall have the power, and is hereby authorized, to contract with and to cooperate with the District in order to ensure that their respective responsibilities are discharged. The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by the District is consistent with the Community-Wide Standard.

## **ARTICLE 19**

### **ALTERNATIVE DISPUTE RESOLUTION**

Section 19.1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors and committee members, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to

encourage the amicable resolution of disputes involving Brightwater Club, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described herein ("Claims") shall be resolved using the procedures set forth below in lieu of filing suit in any court.

Section 19.2 Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Association Documents, or the rights, obligations and duties of any Bound Party under the Association Documents or relating to the design or construction of improvements on Brightwater Club shall be subject to the provisions of this Section.

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

19.2.1 Any suit by the Association against any Bound Party to enforce the provisions of Article 10 (Assessments).

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

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

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

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

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

Section 19.3 Mandatory Procedures.

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

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

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

19.3.1.3 Claimant's proposed remedy; and

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

### 19.3.2 Negotiation and Mediation.

19.3.2.1 The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Executive Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

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

19.3.2.3 If Claimant does not submit a claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

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

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

### 19.3.3 Final and Binding Arbitration.

19.3.3.1 If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the rules of arbitration as may be required by the agency providing the arbitrator. The arbitrator shall be a single arbitrator to be appointed by the Parties. If the Parties are unable to agree upon an arbitrator within thirty (30) days of the Claim being submitted to arbitration, the presiding judge of Eagle County, Colorado shall appoint a qualified arbitrator upon application of either Claimant or Respondent. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If either Claimant or Respondent objects to the service of any arbitrator within fourteen (14) days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such

Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

19.3.3.2 This subsection is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado; provided, however, each party shall have the right to appeal a decision by the arbitrator as to a matter of law only to the District Court located in Eagle County, Colorado.

#### 19.3.4 Allocation of Costs of Resolving Claims.

19.3.4.1 Subject to Section 19.3.4.2 below, each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

19.3.5 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award including, without limitation, attorneys' fees and court costs.

Section 19.4 Claim for Damages. Damages alleged or awarded in connection with a Claim shall be limited to actual damages. No punitive, incidental, consequential or other damages shall be claimed or awarded.

Notwithstanding anything contained herein to the contrary, any claims, grievances or disputes against Declarant arising out of or relating to the design or construction of improvements on Brightwater Club shall require notification to Declarant in writing and provide for a reasonable amount of time for Declarant to correct the defect before any Claim may be made.

## **ARTICLE 20 GENERAL PROVISIONS**

Section 20.1 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 with the Act.

Section 20.2 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 20.3 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 20.4 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.

Section 20.5 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the provisions of this Declaration and the termination provisions of the Act.

Section 20.6 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 20.7 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 20.8 Nonwaiver. Failure by Declarant, the Association, or any Owner to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 20.9 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

*[remainder of page intentionally blank; signature page follows]*

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed as of the day and year first above written.

**CLEARWATER:**

CLEARWATER DEVELOPMENT, INC.,  
a Colorado corporation

By: \_\_\_\_\_

Ian Hause  
Chief Operating Officer

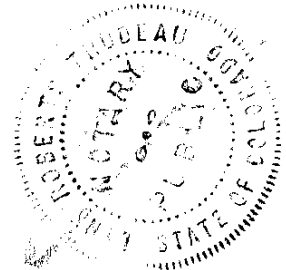
STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF EAGLE                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2005 by Ian Hause as Chief Operating Officer of Clearwater Development, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 8/1/2008

Robert Trudeau  
Notary Public



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Lots:

Lots 1 through 102, inclusive, Brightwater Club, Filing 2, according to the Plat thereof recorded June 20, 2005, at Reception No. 919836, as supplemented, in the Office of the Clerk and Recorder of Eagle County, Colorado.

Development Parcels:

Parcels G, H, J, K, L, O and P, Brightwater Club, Filing 1, County of Eagle, State of Colorado, according to the Plat thereof recorded May 18, 2005 at Reception No. 916179, as supplemented, in the Office of the Clerk and Recorder of Eagle County, Colorado.

Common Area:

Parcel M, Brightwater Club, Filing 1, County of Eagle, State of Colorado, according to the Plat thereof recorded May 18, 2005 at Reception No. 916179, as supplemented, in the Office of the Clerk and Recorder of Eagle County, Colorado.

Tracts AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK and LL, Brightwater Club, Filing 2, according to the Plat thereof recorded June 20, 2005, at Reception No. 919836, as supplemented, in the Office of the Clerk and Recorder of Eagle County, Colorado.



## **EXHIBIT B**

### **RECORDED EASEMENTS AND LICENSES**

1. Right of Way for Ditches or Canals constructed by the authority of the United States as reserved in United States Patents recorded in Book 48 at Page 405; in Book 48 at Page 406; in Book 48 at Page 407; in Book 48 at Page 408; in Book 48 at Page 410.
2. Right of Proprietor of a Vein or Lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patents recorded in Book 48 at Page 405; in Book 48 at Page 406; in Book 48 at Page 407; in Book 48 at Page 408; In Book 48 at Page 410.
3. Right of Way Easement as granted to Eagle Valley Telephone Company in instrument recorded November 1, 1978 in Book 277 at Page 869.
4. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Gypsum Fire Protection District, as evidenced by instrument recorded April 29, 1983, in Book 358 at Page 691.
5. Terms, Conditions and Provisions of Cooperative Agreement for Permanent Damage Prevention Fencing recorded November 14, 1988 in Book 495 at Page 153.
6. Terms, Conditions and Provisions of Permit for Access Roadway recorded September 14, 1981 in Book 328 at Page 854.
7. Right of Way Easement as granted to Holy Cross Electric Association, Inc. in instrument recorded November 14, 1985 in Book 429 at Page 804.
8. Right of Way Easement as granted to Holy Cross Electric Association, Inc. in instrument recorded November 14, 1985, in Book 429 at Page 805.
9. Terms, Conditions and Provisions of Easement Contract recorded December 16, 1994 in Book 657 at Page 292.
10. Easements, Conditions, Covenants, Restrictions, Reservations and Notes on the plat of Rocky Mountain Natural Gas Company-Albertson Cattle Company recorded December 15, 1995 in Book 683 at Page 810 and Assignment recorded September 26, 2002 at Reception No. 808387.
11. Terms, Conditions, and Provisions of Amended and Restated Annexation Agreement recorded September 7, 2000 at Reception No. 738542.
12. Water and/or Water Rights and Ditches and/or Ditch Rights, whether or not of public record.
13. Terms, Conditions and Provisions of Subdivision Improvement Agreement Valagua P.U.D. recorded July 10, 2003 at Reception No. 839983, First Amendment recorded April 14, 2005 Reception No. 912200.
14. Terms, Conditions and Provisions of Declaration of Water Storage Easement recorded November 5, 2004 at Reception No. 896917.
15. Easements, Conditions, Covenants Restrictions, Reservations and Notes on the Plat of Brightwater, Filing No. 1 recorded May 18, 2005 at Reception No. 916179.

16. Easements, Conditions, Covenants Restrictions, Reservations and Notes on the Plat of Brightwater, Filing No. 2 recorded June 20, 2005 at Reception No. 919836.
17. Terms, Conditions and Provisions of Ordinance Vacating a Portion of Valley Road, recorded April 26, 2005, at Reception No. 913503.
18. Terms, Conditions and Provisions of Declaration of Protective and Restrictive Covenants for "The Preserve" recorded June 3, 2005, at Reception No. 918093.