

**VILLAGE AT DRY CREEK, FILING NO. 1  
TOWN OF HAYDEN, COLORADO  
A COMMON INTEREST OWNERSHIP COMMUNITY**

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**RECITALS**

**THAT, WHEREAS,** Village at Dry Creek, LLC, a Colorado Limited Liability Company, Orchard Mesa Estates I, L.P., a Colorado limited partnership, (together as "Declarant") is the owner of all of the real property located in the Village at Dry Creek, Filing No. 1 (hereinafter referred to as "Dry Creek Subdivision" or "Subdivision") described in Exhibit "A" attached to this Declaration and by this reference made a part hereof, located in the Town of Hayden, Routt County, State of Colorado; and

**THAT, WHEREAS,** Declarant desires to establish a project under the Colorado Common Interest Ownership Act (the "Act"), C.R.S. Section 38-33.3-101 *et seq.* and to define the character, duration, rights, obligations and limitations of ownership in such project. There is now situated, or under construction, on the property described in Exhibit "A" hereto one hundred and fifty (150) separately designated lots, as Filing 1 of the plan herein. The Map shows the location of such lots on the property described in Exhibit "A" hereto, which is hereby made subject to this Declaration. Declarant has preliminarily planned for additional Filings of construction as well. Accordingly, this document is intended for expansion, and for completion of future phases of the plan. Declarant may, and hereby expressly reserves the right to subject all or any part or parts of additional Filings and property to this Declaration by recording one or more Supplemental Declarations and one or more Supplemental Maps in the Routt County, Colorado public records, and

**THAT, WHEREAS,** Declarant establishes for the purpose of creating and keeping the Dry Creek Subdivision attractive and of aesthetically pleasing architectural design, materials and appearance and to preserve the residential character of the Subdivision; and for the further purpose of guarding against hazards and unnecessary interference with the natural beauty of the Subdivision; all for the mutual benefit and protection of all property owners in the Subdivision; and

**THAT, WHEREAS,** Declarant shall cause to be incorporated the Village at Dry Creek Property Owners Association, Inc. (the "Association"), a Colorado nonprofit corporation, for the purposes described in its Articles of Incorporation and this Declaration. Further, the Declarant does hereby declare that the following covenants, stipulations, limitations, restrictions and uses shall hereafter apply to the above described real property and to all improvements erected

thereon as restrictive and protective covenants running with the land and shall hereafter be binding upon the Declarant and all future owners of any part of said real property.

## DECLARATION

Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its successors and assigns, and to any person acquiring or owning an interest in the real property which is or becomes subject to this Declaration, their grantees, successors, heirs, executors, administrators, devisees or assigns, subject to amendment as provided by the Act.

### I. DEFINITIONS

1.1 **"Act"** means the Colorado Common Ownership Interest Act, C.R.S. §38-33.3-101 *et seq.*, as the same may be amended from time to time.

1.2 **"Architectural Control Committee"** shall mean the body as further described at Article IX herein.

1.3 **"Architectural Review Guidelines"** shall mean the conditions, restrictions and limitations as set forth at Exhibit B attached hereto.

1.4 **"Association"** shall mean the Village at Dry Creek Property Owners Association, Inc., a Colorado nonprofit corporation.

1.5 **"Board of Directors"** shall refer to the Board of Directors ("Executive Board") of the Association, designated to act on behalf of such Association.

1.6 **"Common Elements"** are those portions of the Subdivision which are designated for ownership by the Association and further designated on the real property described in the Map. (See Section 4 for further description of common elements).

1.7 **"Common Expenses"** shall refer to any estimated or actual expenses or liabilities incurred or anticipated to be incurred by or on behalf of the Association, together with any allocations to reserves.

1.8 **"Declarant Control Period"** shall mean the period of Declarant control, set forth in the Act.

1.9 **"Dwelling"** shall mean a residential building primarily constructed for and occupied for residential purposes.

1.10 **"Governing Documents"** shall refer collectively to those documents which govern the operation of the Association, the Real Property and the Subdivision, including: (a) Articles of Incorporation; (b) Bylaws; (c) Rules and Regulations established by the Board of Directors of the Association; (d) the recorded Plat; and (e) these Covenants, as one or more of the same may be amended from time to time. Each and every provision of the Governing Documents shall be given the force and effect as if set forth in these Covenants.

1.11 **"Lot"** shall mean a separately described part of the Subdivision designated as a Lot on a Plat. Each Lot within the Subdivision may be used and occupied only for residential purposes, and only one Dwelling may be constructed on a Lot.

1.12 **"Map"** or **"Plat"** means that part of this Declaration that is a land survey plat as forth in C.R.S. 38-51-102. The Plat for the Subdivision has been recorded at Reception No. 670528 of the Routt County, Colorado real estate records.

1.13 **"Number of Lots"** It is anticipated that the number of Lots in the Subdivision is one hundred and fifty (150). The total number of Lots potentially subject to this Declaration is subject to increase or decrease if Declarant at its sole option determines at a later date to include an amendment to these Covenants of Dry Creek Subdivision.

1.14 **"Open Space"** refers to the portion of the Subdivision designated by the Declarant and shown on the Plat or Plats as dedicated to the Town of Hayden, Colorado and shall remain primarily undeveloped and utilized for open space in accordance with the Town Code and Ordinances of the Town of Hayden.

1.15 **"Owner"** or **"Lot Owner"** shall refer to the record owner, whether one or more persons or entities, of fee simple title to one or more Lots, but excluding the Declarant, its successors and assigns.

1.16 **"Special Declarant Rights"** shall mean those rights as contemplated within C.R.S. 38-33.3 et. seq. including but not limited to the additional phases of development as reserved by Declarant, and those as further described at Section 10.4 below.

1.17 **"Structure"** shall mean a building, driveway, fence, outbuilding, parking area, improvement, wall, foundation, walkway, gazebo, patio, deck, utility line or other fixture or improvement affixed and situated on a Lot with the intent that it remain indefinitely.

Further, the aforesaid owner does hereby declare that these Covenants shall hereafter apply to the Real Property and to all improvements erected thereon as restrictive and protective covenants running with the land and shall hereafter be binding upon the Owners and all future owners of any part of said real property:

## **II. THE OWNERS ASSOCIATION**

2.1 **Membership in Association.** Each Owner of an undivided fee simple interest in a Lot (including Declarant with respect to Lots from time to time owned by Declarant, but not including the Association with respect to Lots at any time owned by the Association) shall be a Member of the Association and shall remain a Member until such Owner ceases to be an Owner. Each Owner of an undivided fee simple interest in a Lot amounting to less than the entire fee interest in such Lot, including a co-owner as tenant in common or joint tenant, shall be a Member of the Association; however, each Lot is entitled to only one vote. Each Member shall comply strictly with the provisions of the Governing Documents.

2.2 **Purposes and Powers.** The Association shall have among its purposes and powers the protection of the Real Property and the enforcement on behalf of the Owners of the provisions of these Covenants; and the Association shall have the power generally to do everything necessary or proper for the health, welfare, safety, benefit or enjoyment of the Owners.

2.3 **Dry Creek Subdivision. Additional Filings.** If at any time in the future, Declarant develops additional Filings to the Dry Creek Subdivision, each and every additional Filing shall be made subject to these Covenants. Owners of Lots therein shall automatically become members of the Association and the term "Real Property" shall be deemed to also refer to such additional Filings. This provision shall not be amended or deleted without the written consent of Declarant.

2.4 **Votes.** Members shall be allocated one (1) vote for each Lot owned. In order for a Member to cast a vote. Each Owner shall register his mailing address with the Association as provided in its Articles or Bylaws. Periodic statements for general assessments, notices of special assessments, notices of meetings, and other routine notices from the Association to an owner shall be sent by regular mail, postage prepaid, addressed to the name of the owner at such registered mailing address. Any Owner may give written notice to other owners in the same manner. All other notices or demands intended to be served by the Association upon an Owner shall be sent by certified mail, postage prepaid, addressed to the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated by the Bylaws of the Association.

2.5 **Power and Authority.** The Association shall have all of the power and authority necessary and proper to manage the business and affairs of the Subdivision, pursuant to the Governing Documents. The Association shall act through its Board of Directors. The Association shall have among its purposes and powers the enforcement, on behalf of the Owners, of the Governing Documents and, to the extent accepted by the Association of applicable resolutions of a governmental entity; and have the power generally to do everything necessary or proper for the health, welfare, safety, benefit, or enjoyment of the Members. The Board of Directors of the Association may contract with or employ any managing agent for the Association (including Declarant or any affiliate of Declarant), to perform any of the duties, services, powers and responsibilities of the Association, pursuant to the Governing Documents.

2.6 Enforcement. Each Owner and each Owner's family, guests, invitees and tenants shall be bound by and shall comply with the Governing Documents of the Association. These Covenants and the other Governing Documents may be enforced by the Association in appropriate proceedings at law or in equity, including without limitation, an action to restrain or enjoin any violation or threatened violation and to recover damages. In any such action or proceeding in which the Association is the primarily prevailing party, the Association shall be entitled to an award for its costs and expenses of the action, including reasonable attorneys' fees, and as provided for within the Act. Nothing herein shall be deemed to limit or restrict the right of Owners to enforce in appropriate cases the Governing Documents. Without limiting other remedies, the Association may from time to time establish and collect uniform liquidated damage sums for violation of specific provisions of the Governing Documents. At the option of the Association, and after notice to the Owner involved, any such liquidated damage sum shall be a special assessment against such Owner's Lot, for which the Association shall have the collection rights provided in this Declaration. During any period that a violation of these Covenants or of the other Governing Documents is continuing, the Association may suspend the voting privileges of the Owner of the Lot with respect to which such violation has occurred. The Association may levy fines for violation of the Governing Documents, as determined by the Board of Directors from time to time.

2.7 Powers of the Board of Directors. The Board of Directors on behalf of the Association shall have all the powers, authority and duties necessary to enforce the provisions of this Declaration and to promulgate reasonable rules and regulations as to the use of the Lots, which may modify, limit, create exceptions to, or expand the initial use restrictions set forth in this Declaration. The Board of Directors shall have all the powers, authority and duties granted or delegated to it by the Governing Documents. The Board of Directors shall have any powers available to boards of directors pursuant to Colorado statutes as apply to Not for Profit Corporations, as the same may be amended from time to time. The Declarant shall have the power to appoint and remove officers and members of the Board of Directors during the Declarant Control Period.

### **III. ASSESSMENTS AND BUDGETS**

3.1 Assessments Levied by the Association. The Association shall fix, determine, levy, assess and collect general assessments from the Owners of all Lots on an annual basis for payment of Common Expenses of the Association (hereinafter called "Annual Assessments"), based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of the Association's duties during such assessment year, and to fund and contribute to any reserves deemed appropriate by the Board of Directors. The Association may also fix, determine, levy, assess and collect special assessments authorized by this Declaration or the Articles or Bylaws of the Association (hereinafter called "Special Assessments" which, together with Annual Assessments and Default Assessments, shall be referred to as "Assessments"). All monetary sums assessed against an Owner pursuant to the Governing Documents or any expenses of the Association which are the obligation of an Owner or which are incurred by the Association on behalf of the Owner pursuant to the Governing

Documents, shall be a Default Assessment which may be 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. Assessments shall commence the first day of the first quarter after conveyance of the first Lot to an Owner other than Declarant. Notwithstanding any provision that may be contained in this Declaration to the contrary, for so long as Declarant is the owner of any Lot, Declarant shall not be liable for assessments against such Lot, provided that Declarant funds any deficit in the operating expenses of the Association. Declarant may at any time commence paying such assessments as to all Lots owned by Declarant and thereby terminate (as of the first day of the following calendar month) its obligations to fund deficits in the operating expenses of the Association.

3.2 Proportionate Share of Assessments. Each Annual Assessment (including each Assessment for a reserve) and each Special Assessment (other than increases as a result of individual Owners' actions, which may be allocated to those Owners) shall be allocated among the Owners in proportion to each Owner's "Allocated Interest", which is a fraction, the numerator of which is one and the denominator of which is the total number of Lots within the Subdivision.

3.3 Procedures for Payment. The Association shall establish procedures by which Assessments shall be made known to and paid by the Owners. Such procedures may include the determination and levying of such Assessments as a periodic and advance (but not less often than annually) installment billing of an annual budget, including funding of reserves, in which event Association expenses shall be deemed to have been severally incurred as of the respective dates of the installment billings. Unpaid general and special Assessments more than thirty (30) days past due shall bear interest from the date the same became due until paid at the rate established by the Board of Directors from time to time, not to exceed twenty-one percent (21 %) per annum. The Association may also levy uniform late charges on delinquent Owners, and may collect from delinquent Owners all costs and expenses of collecting Assessments, including court costs, witness and expert fees, discovery costs and reasonable attorneys' fees ("Collection Costs"), whether or not suit is brought. All interest, late charges and Collection Costs shall be Default Assessments against delinquent Owner(s) and such Owners' Lot(s).

3.4 Obligation to Pay Assessments. The Owner of each Lot shall be personally obligated to pay the full amount of any and all Assessments against such Owner's Lot(s), including without limitation, such Owner's pro rata share of Association expenses allocated to such Lot(s). If a Lot is owned by two (2) or more persons, all such Owners shall be personally, jointly and severally obligated to pay all of the foregoing amounts to the Association. No Owner may exempt himself from liability for payment of Annual or Special Assessments or other amounts due to the Association by abandonment of such Owner's Lot or Lots.

3.5 Liability of Transferee. In case of sale or other voluntary transfer of a Lot or any interest therein, the transferee shall be jointly and severally liable with the transferor for all unpaid Assessments, interest, late payment charges, collection costs and other amounts payable to the Association with respect to such Lot which are accrued and unpaid as of the date of transfer. If any lienor (including a first lienor) obtains title to a Lot by a voluntary deed in lieu of

foreclosure, then such lienor shall be jointly and severally liable for all such amounts accrued as of the date of transfer, and such lienor shall be deemed an Owner for all purposes from and after such transfer. If a first lienor obtains title to a Lot by sheriff's deed or public trustee's deed upon foreclosure of the first lien against such Lot, then such first lienor shall not be liable for such unpaid amounts accrued against such Lot prior to the date of transfer, but such first lienor shall be deemed an Owner for all purposes from and after the date of transfer. For purposes of the foregoing, the date of transfer shall be the earlier of the date of issuance to the first lienor of a deed to the Lot(s) or the expiration of the period of redemption allowed to the Owner and to all subsequent lienors entitled to redeem in the foreclosure proceeding.

3.6 Estoppel Certificate. Within ten (10) calendar days after receipt of a written request from any Owner or mortgagee of a Lot or from any prospective mortgagee, purchaser or other prospective transferee of a Lot, or from any title insurer insuring or proposing to insure such Lot, the Association shall issue a written itemized statement to the requesting party setting forth, along with any other information the Association may choose to include, the amount of any unpaid Assessments, interest, late payment charges and collection costs due with respect to the Lot(s) in question. There shall be a charge equal to \$50.00 in U.S. currency or 100 times the cost of a local coin telephone call in Hayden, Colorado, whichever is higher.

3.7 Contribution to Working Capital and Reserves. Upon the acquisition of record title to a Lot from any selling source, each transferee Owner shall make a non-refundable contribution to the working capital and reserves of the Association in the amount of \$200.00.

#### **IV. COMMON ELEMENTS**

4.1 Common Elements. Common elements shall mean (i) all of the real property described in Exhibit "A" attached hereto, but excluding the Lots; (ii) the Entry Monument(s); (iii) any play ground, grass areas, project signage or soft surface trails, if in existence or later constructed; (iv) a private lift station for the benefit of the Association, until such time and the ownership, operation and maintenance of the lift station is taken over by the Town of Hayden, (v) a storage unit for the Association's use and benefit, if constructed on site; (vi) any designated landscaping; and (vii) all other parts of the property specifically designated as common elements on the Map, including but not limited to the items as aforesated herein.

4.2 Reallocation of Common Elements. Common Elements in the Subdivision may hereafter be allocated based on the Expansion Property in connection with the exercise of Development Rights.

4.3 Fencing Maintenance. The Association shall allocate amongst its Lot Owners any costs associated with fencing maintenance for that part of the Subdivision that is contiguous and adjacent to neighboring landowner, Wes Signs.

4.4 Lift-Station Maintenance. The Association shall allocate amongst its Lot Owners any costs associated with lift-station maintenance pursuant to that certain Cost-Reimbursement Agreement as consummated with the Town of Hayden.

4.5 Temporary Emergency Access Easement Maintenance. A Temporary Emergency Access Agreement has been executed by the Declarant with the Town of Hayden to provide the Town of Hayden with emergency secondary access until such time as permanent secondary access is achieved for the subdivision. The Association shall allocate amongst its Lot Owners any costs associated with the related maintenance and costs pursuant to that certain Temporary Emergency Access Easement Agreement as consummated with the Town of Hayden.

## **V. MAINTENANCE, REPAIR AND REPLACEMENT**

5.1 Common Elements. The Association shall maintain, repair, replace, and keep free from snow and debris all of the Common Elements. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of this Section. All of the Common Elements shall be owned only by the Association, subject to the Development Rights and other Special Declarant Rights created or reserved in this Declaration and, with respect to any property hereafter added to the Subdivision, such Development Rights and other Special Declarant Rights created or reserved in the amendment to this Declaration by which such property is added. The Association has the right and power to cause improvements to be made to or upon the Common Elements, as a part of the Common Elements, subject to Development Rights and Special Declarant Rights, including but not limited to storage buildings as deemed desirable by the Declarant. Without limiting the foregoing, as long as the Declarant may exercise any Development Rights in Expansion Property, the Association shall not make additional improvements on Expansion Property without the Declarant's prior written consent. The Association shall have an easement on, over, across and above all Lots for access to and maintenance, restoration, repair and replacement of existing or future Common Elements and improvements on Common Elements. Each Lot Owner shall have their 1/150<sup>th</sup> of allocated interest in responsibility for the costs of maintenance, repair and replacement of Common Elements as further provided for herein.

5.2 Individual Lots. It shall be the duty and obligation of each Lot Owner, at such Lot Owner's expense, to maintain, repair, and replace all portions of such Owner's Lot, except the portions of the Lot required by the Declaration to be maintained, repaired, or replaced by the Association.

5.3 Right of Access. Any person authorized by the Board of Directors shall have the right of access to all portions of the Subdivision for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Subdivision, for the purpose of performing installations, alterations, or repairs, and for the purpose of reading, repairing, and replacing utility meters and related pipes, valves, wires, and equipment, and for the Entry Monument and fencing maintenance requirements as further referenced and provided for herein.



5.4 Repairs Resulting From Negligence. Each Lot Owner will reimburse the Association for any damages to any other Lot or to the Common Elements caused intentionally, negligently, or by such Lot Owner's failure to properly maintain, repair, or make replacements to such Lot Owner's Lot for which such Lot Owner is responsible under the Declaration. The Association will be responsible for damage to Lots which are caused by the Association's intentional acts, negligence, or by the Association's failure to maintain, repair, or make replacements to the Common Elements.

## **VI. RESIDENTIAL USE COVENANTS**

6.1 Land Use and Building Type. No Owner's Lot of the Dry Creek Subdivision shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than single family dwellings. No building shall exceed the height limitation specified by ordinance of the Town of Hayden, and no lot shall have a private garage for more than three (3) vehicles per dwelling unit. All houses shall have as a minimum a two car garage. All uses of the real property in the Subdivision shall be in conformance with the zoning, subdivision and other applicable ordinances, rules and regulations of the Town of Hayden, Routt County, Colorado or its successors. Note the restrictions contained within this Section are for Owner's Lots. The Declarant and Association may construct common area buildings, such as storage buildings or pump houses as desired for Association operations.

6.2 Dwelling Size and Quality. All lots and building sites in the Subdivision shall be used exclusively for purposes permitted by the Hayden Town Code and Ordinances. All construction shall be new. No building previously occupied or used at another location shall be allowed. No building or structure originally constructed as a mobile home may be moved onto any lot or building site. Modular housing is allowable providing it meets all the requirements of Architectural control contained herein and the criteria of the Hayden Town Code. All construction to be of new materials except that used brick or other recycled materials may be used with prior written approval of the Architectural Control Committee. The following criteria shall apply to all dwelling units in the Subdivision:

(a) The living area square footage of the main structure, exclusive of one story open porches and garages, shall not be less than 1200 square feet (above grade).

(b) All buildings must have at least five (5) exterior corners with minimum offset at corner to be twenty-four (24) inches. Victorian designs as approved by the Architectural Committee could have four (4) main comers if in addition there are substantial covered porches (one-third or more of building frontage).

(c) All roofs to have a minimum pitch of 6 in 12 (18 degrees). Factory painted metal roofing is allowed excepting galvanized and white. Roofs shall be nonreflective.

(d) Exterior metal flue pipes, other than those venting through the roof, must be enclosed in a chase.

(e) All fascia boards shall be minimum six-inch (6") nominal width and roof eaves shall overhang by a minimum of twenty four inches (24").

(f) Exposed foundation walls shall be covered with stucco, paint, flashing or other approved material. No asphalt damp proofing coating shall be left exposed.

(g) Mill finish aluminum windows will not be permitted.

(h) Driveways shall be hard surface such as asphalt or concrete.

6.3 Building Exteriors, Roofs and Flues. The style and colors of all Dwellings and outbuildings, including roofs and chimneys, shall harmonize with the natural surroundings. Garishly colored or reflective roofing material shall not be permitted or installed on any structure. Materials shall comply with Architectural Review Guidelines.

6.4 Fences. Any fence, wall or similar type barrier to be constructed, erected or maintained on a Lot shall not exceed sixty inches (60") in height and shall not interfere with or encroach upon any trail easements or rights of way. All fences must be constructed of wood or of wood-type as approved by the Architectural Control Committee. No fence shall be constructed in front of the house or dwelling on the Lot as approved by the Architectural Control Committee.

6.5 Commercial Operations. No Dwelling, Lot, or any other part of the Property may be used for commercial purposes at any time, except for such "home office" business activities which must exhibit the following:

6.5.1 the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell front outside the Lot;

6.5.2 the business activity conforms to all applicable zoning requirements;

6.5.3 the business activity does not involve door-to-door solicitation of residents;

6.5.4 the business activity does not, in the Board of Directors' reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Subdivision which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and

6.5.5 the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board of Directors.

6.6 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

6.6.1 Temporary Structures, Outbuildings and Vehicles. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. No boat, trailer, camper, snowmobile, motorcycle, or motor home shall be parked on any street or nearer to any street than the front building line. All such vehicles must be properly licensed and in running condition unless wholly enclosed in a garage. No loaders, backhoes, cranes, dump trucks, tractors or other equipment may be parked in front of or on any Lot in the Subdivision.

No mobile home or trailer shall be erected, placed or constructed, whether temporarily or permanently, on the Subdivision at any time. No tent, teepee, shack, camper, boat, trailer, or any other temporary moveable Structure shall be used for residential occupancy at any time on any part of the Subdivision, except as may be specifically authorized in writing by the Association.

No campers, camper shells, snowmobiles, boats, boat trailers, trailers, commercial vehicles, abandoned automobiles, equipment or machinery shall be parked or stored on any part of the Subdivision for more than two (2) days unless totally screened from public view and screened from view from all other Lots.

Motorcycles, motor bikes, or recreational vehicles shall not be permitted to be used by residents or guests off the regular roadways on trails or areas of the subdivision dedicated to the Town of Hayden, Colorado.

6.7 Continuity and Manner of Construction. All structures for which the construction is commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve (12) months of commencement unless the Association grants an exception in writing. Each building or other structure shall be constructed, erected and maintained in strict accord with the approved plans and specifications. During the construction period the Lot shall be maintained in an orderly and respectable condition, with construction rubbish removed periodically and not allowed to accumulate on the site. Burning of construction rubbish is not allowed. No building products, rubbish, soil or any other material will be allowed on any other Lot, common driveway or roads within the Subdivision. Storage of all material and equipment must be within the boundaries of the Lot. Any material in transport to or from the Lot which is spilled on any road, common driveway, or other Lot shall be promptly removed and the roadway immediately restored to its original condition by the responsible party and the Lot owner. Failure of any owner, contractor or supplier of materials for any Lot to comply with this paragraph shall be cause for the Association to bring an action against the Lot owner for damages and restitution. Additionally, the Association may have such conditions immediately remedied and shall assess the Lot owner all costs involved for such work through lien proceedings upon the property.

6.8 Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot, one sign of not more than six (6) square feet advertising the property for sale or rent, or similarly sized signs used by a builder to advertise the property during the construction and sales period, subject to the use allowances as provided for in C.R.S. 38-33.3 *et. seq.*

6.9 Address Signs. Address signs shall be placed identifying structure numbers in accordance with the requirements of the Town of Hayden and police and fire departments having jurisdiction over the Subdivision.

6.10 Animals and Pets. No noisy, obnoxious or offensive animals, including but not limited to, livestock nor poultry shall be raised, bred or kept or allowed on any Lot. An aggregate total of three (3) dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and are at all times quiet and clean and are restricted to the rear of each Lot or on leash under handler's control and are kept in accordance with all applicable laws, rules and regulations of the appropriate governmental authorities. Animals and pets which are allowed must be kept and restricted to a cleanly maintained and fenced area at the rear of the Lot.

6.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in approved sanitary containers. All waste containers or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of trash, weeds and other refuse by the Lot owner. No unsightly materials or other objects are to be stored on any Lot.

6.12 Sight Distance at Intersection. No hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways in the Subdivision shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Subdivision street property lines and a line connecting them at points twenty-five (25') feet from the intersection of the street lines, or in case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

6.13 Oil, Mining and Water Well Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot.

6.14 Landscaping. All surface areas, except areas occupied by buildings, parking areas and driveways, disturbed by construction shall be returned to a smooth and graded condition by the contractor building the dwelling within ninety (90) days after occupancy by the owner. The owner shall landscape the property in native grasses, gardens or lawns within one hundred eighty (180) days after original occupancy to be extended until May of the following year if occupancy first occurs between August and December. Trees, lawns, shrubs or other plantings provided by the owner shall be properly nurtured and maintained or replaced at the property owner's expense upon request of the Architectural Control Committee.

6.15 Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the owner of the Lot.

6.16 Leases. The Owner of any Dwelling which is rented or leased to other than an Owner must include in every lease a reference to this Declaration and an obligation on the part of the lessee to abide by all the restrictions herein contained upon use of the leased property.

6.17 Maintenance. Except as otherwise provided herein, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, and improvements constructed thereon shall be the responsibility of the Owner. If the Owner fails to conduct such maintenance and repairs, the Association has the right, but not the obligation, to undertake such maintenance and repairs and assess any costs involved in the maintenance and repairs against the Lot as a specific Assessment.

6.18 Fair Housing. No Lot Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of its Lot to any person of a specified race, sex, adulthood, marital status, color, religion, ancestry, physical handicap, age, or national origin or other groups as protected by law.

6.19 Variance. A variance from or exception to the provisions hereof may be granted in writing by the Association upon recommendation of the Architectural Committee, so long as such variance does not violate applicable resolutions, rules, and regulations of Routt County and the Town of Hayden.

6.20 Binding Ordinances. The recordation of these Covenants does not alter, change or modify the requirements imposed on the Subdivision and Dry Creek Subdivision, Filing No. 2 by the Board of Trustees in approving the Final Plat and by the Ordinances of the Town of Hayden (collectively referred to as the "Ordinances"). In the event of any conflict between the Covenants and the Ordinances, the Ordinances shall control. This section 4.21 may not be amended without the written consent of the Board of Trustees of the Town of Hayden.

6.21 Parking. No recreational equipment such as a boat, motor-home, motorcycle, four-wheel ATV's, trailers, or the like shall be permitted to reside on the premises unless stored within a garage unit.

6.22 Exemption for the Association. The Association shall not be subject to the use covenants contained herein unless as otherwise determined by the Executive Board.

## **VII. EASEMENTS**

7.1 **Easements.** The Subdivision shall be subject to all easements as shown on the Plat, any amendments thereto, any recorded plat affecting the Subdivision, and any other easements of record as of the date of or created by the recordation of this Declaration.

7.2 **No Interference.** Within these easements no structure or other material shall be placed or permitted to remain on any Lot which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

7.3 **Utility and Drainage Easements.** In addition to the specific utility easements shown on the Plat, there is hereby created a general easement for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical and cable communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits and conduits under and over the Lots. No water, sewer, gas, telephone, electrical, or communications lines, systems, or facilities may be installed or relocated on the surface of the Subdivision unless approved by Declarant or after termination of Declarant's control by the Association. Such utilities may be temporarily installed above ground during construction, if approved by Declarant. Declarant also reserves for itself and its successors and assigns, and grants to the Association and its agents, employees, successors and assigns, an easement to enter on any portion of the Subdivision for the purpose of modifying the grade of any drainage channels to improve the drainage of water.

7.4 **Declarant's Rights Incident to Construction.** Declarant hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Subdivision, together with the right to store materials and to make such other use of the Subdivision as may be reasonably necessary or incident to the construction of Dwellings on the Lots or other Structures; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access by the Owners.

Any entity using the utility and drainage easements provided for herein shall use reasonable efforts to install and maintain the utilities and drainage facilities provided for without disturbing the uses of the Owners. The Association and Declarant shall review the installation and maintenance activities as promptly as reasonably possible; and in the case of utility work, shall require that the surface be restored to its original condition as soon as possible after completion of such work. Should any entity furnishing a service covered by this general easement request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Subdivision without conflicting with the terms of this Declaration.

This general easement shall in no way affect, void, extinguish or modify any other recorded easement affecting the Subdivision. Affected or benefited Owners shall share equally in the costs of construction, maintenance and repair of shared utility service lines between or among some, but not all, Lots.

7.5 Reservation of Easement, Exceptions and Exclusions. Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses for purposes including, but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions and exclusions for the best interest of all the Owners and the Association, in order to serve all the Owners within the Subdivision.

7.6 Maintenance Easement. An easement is hereby reserved by Declarant, and granted to the Association and any member of the Board of Directors and their respective officers, agents, employees and assigns, upon, across, over, in and under the Subdivision and a right to make such use of the Subdivision as may be necessary or appropriate to make such emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Governing Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of the Dwelling on such Lot, as required by the Governing Documents.

+ See, also, additional easements as referenced on the Plat and pursuant to Article IV. herein.

## VIII. INSURANCE

8.1 Insurance Required. Commencing not later than the time of the first conveyance of a Lot to an Owner other than the Declarant, the Association shall maintain insurance as required by the Act:

(a) A policy of comprehensive public liability insurance covering the activities of the Association in an amount determined by the Association, but not less than one-million Dollars (\$1,000,000.00) per occurrence, for personal injury or death, and/or property damage. The scope of such coverage shall include all coverage in the kinds and amounts customarily required for nonprofit organizations, including without limitation, liability for non-owned and hired automobiles, liability for property of others, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association. Is this enough?

(b) Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If a management agent handles funds of the Association, then fidelity coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for Association funds, if required pursuant to the applicable provisions of said section. The fidelity bond or insurance must name the Association as the named insured and

shall be written to provide protection in an amount no less than the lesser of (i) one-half times the Association's estimated annual operation expenses plus the Association's reserves, (ii) three months aggregate Annual Assessments plus the Association's reserves, or (iii) the estimated maximum amount of funds, including the Association's reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any Property who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(c) A Workers' Compensation policy, if required.

(d) A policy of "Directors and Officers" liability insurance to the extent reasonable and available, in the Association's discretion.

8.2 Other Insurance to be Maintained by Lot Owners. All insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and all insurance coverage on the Structures constructed on each Lot shall be the responsibility of the Owner thereof.

8.3 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks insurable by the Association. A report of coverages shall be delivered to all Lot Owners annually.

## **IX. ARCHITECTURAL CONTROL COMMITTEE**

9.1 Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee ("Committee") as to materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the front or side of the house unless similarly approved. No reconstruction, exterior addition, change or alteration to any Dwelling or outbuilding shall be made until the plans and specifications showing the nature, kind, shape, heights, color, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography.

9.2 Purpose. The Dry Creek Subdivision is created as a planned residential community to take full advantage of the Property's location and environment. The planning and design philosophy of the Property is to encourage preservation and enhancement of values throughout its boundaries, while also allowing for individuality of architectural expression by its owners. It is in every Owner's interest and the intent of these Declarations that all development constructed on the Lots attempt to develop responsive and indigenous architecture, and employ sensitive siting of improvements. Buildings should not assert themselves at the expense of neighboring



development, but rather relate to each other to form a harmonious community which shares and supports a common interest and appreciation of the environment.

9.3 Membership. The initial Architectural Control Committee is composed of the Board of Directors of the Association. The composition and terms of the Committee members shall be at Declarant's discretion until such time as Declarant's right to appoint Members to the Board of Directors in the Association ceases as provided in this Declaration. The Board of Directors may at its discretion appoint others to the committee. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the Board of Directors of the Association shall have full authority to select a successor. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then Board of Directors of the Association shall have the power to change the membership of the Committee or restore to it any of its powers and duties.

9.4 Duties of the Committee. The Committee shall review, study, and approve or reject proposed improvements upon the Property. The Committee shall consist of a Chairman, a Secretary and one other Committee member. The Chairman shall preside over all Committee meetings and be responsible for the coordination and direction of the Committee's work, and promulgation of its Guidelines and amendments to same from time to time. The Secretary shall keep the minutes of the Committee proceedings and its records, and shall publish and disseminate such materials as may be necessary or desirable to guide Owners and enforce these provisions.

9.5 Meetings. The Committee shall meet at the convenience of its members or may utilize the mail or phone as necessary to transact its business. Applicants are encouraged to attend any Committee meeting addressing their application, but the Applicant need not be present for the Committee to act. The address of the Committee shall be 1865 Ski Time Square, Suite 202, Steamboat Springs, Colorado 80477.

9.6 Right of Waiver. The Committee may waive or vary procedures or standards and criteria when conditions such as topography, location of property lines, trees, vegetation and other physical limitations, or architectural appropriateness, require it.

9.7 Non-Liability of Committee and Declarant. Neither the Committee nor Declarant or their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans and specifications. Every Owner or other person who submits plans to the Committee for approval agrees, by said submission, that he will not bring any action or suit against the Committee or Declarant to recover damages. Approval by the Committee shall not be deemed to constitute compliance with the requirements of any local building codes and it shall be the responsibility of the Owner and his representatives to comply therewith.

9.8 Enforcement and Review Fee. The Guidelines attached as Exhibit B may be enforced as provided in the Declaration. The Committee may establish a review fee schedule for each application type submitted which fee schedule may be changed from time to time to reflect actual costs. The Architectural Committee and/or the Board of Directors of the Association may issue clarifications, guidelines or additions to this procedure. The Committee may employ a licensed architect to review the plans and may charge the Lot Owner a review fee not to exceed \$250.00.

9.9 Information Submitted By An Owner. Any Owner submitting plans for Committee approval shall be responsible for the verification and accuracy of all dimensions, grade, elevations and location of key natural terrain features for his Lot. All plans presented to the Committee must take into account all requirements of the Subdivision that refers to building envelopes, water quality setback, driveway placement, landscaping, and any other items pertaining to construction of a residence or building.

9.10 Owner Representation. Each Owner shall advise all his representatives, (e.g. architect, engineer, contractor, subcontractors, and their employees) of the standards and procedures outlined in this Declaration and these Guidelines for the Subdivision, and all such representatives shall comply with said documents.

9.11 Resubmittal of Plans and Appeal. Should the Committee deny any Review Process submission, any resubmissions shall follow the same procedures as the rejected submittal. The Owner or his architect shall reply in writing to Committee concerns during the Review Process. Any proposed exterior additions or changes to a residence not part of the original construction plan approval shall be submitted for Committee review and approval.

9.12 Other Approvals. Prior to submittal to any governmental body for either a building permit or a certificate of occupancy, the forms attached hereto at Exhibits "C" and "D" respectively indicating approval must be completed by the Architectural Control Committee. Notwithstanding the approval of the Committee, the Owner is likewise required to obtain all other approvals as may be required by any governmental or quasi-governmental body having jurisdiction over the Subdivision, the Owner, or the Owner's Lot.

9.13 Exemption for the Association. The Association shall not be subject to the architectural control requirements contained herein unless as otherwise determined by the Executive Board.

## **X. GENERAL PROVISIONS**

10.1 Term. These covenants are to run with the land comprising the Subdivision and shall be binding on all parties and all persons claiming under them into perpetuity. At any time these covenants can be amended by an instrument signed by 67% of the then Owners of the Lots which have been received, and as provided for at section 10.6 below.

10.2 Enforcement. If any person shall violate or threaten to violate any of the provisions of these covenants or any amendments hereto, it shall be lawful for the Association, or any person or persons having any interest in any Lot in the Subdivision to institute proceedings at law or in equity to enforce the provisions of these covenants or any amendments hereto to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys fees, for such violations.

10.3 Association as Attorney-In-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Lot, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution as the Owner's true and lawful attorney in the Owner's name, place and stead to deal with the 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 Section and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written acknowledged instrument.

10.4 Special Declarant Rights and Development Rights. Declarant hereby reserves the right, from time to time, until twenty (20) years from the date of recording this Declaration, and upon an additional period of twenty (20) years if so exercised, for itself and for parties described in the definitions section above, to perform the acts and exercise the rights hereinafter specified as follows and as further provided for by C.R.S. 38-33.3 *et. seq.*:

10.4.1 Completing of Improvements. The right to complete improvements indicated on the Plat for the Subdivision.

10.4.2 Sales Management and Marketing. The right to maintain upon, and to remove from the Subdivision and Lots owned by the Declarant, as the Declarant may choose, and in such number, size and location as may be reasonably required by the Declarant convenient or incidental to the construction on, management of, or sale or rental of Lot signs identifying the Subdivision and advertising the sale of Lots or in any way related to the business of Declarant;

10.4.3 Model Residences. The right to utilize model residences constructed or to be constructed on Lots;

10.4.4 Sales or Management Offices and Construction Offices. The right to construct and maintain sales or management offices and construction offices which, to the extent they are on a Lot as defined in this Declaration, are hereby declared to be personal property, removable by Declarant, as applicable, promptly upon the Declarant ceasing to be a Lot Owner;

10.4.5 Parking Areas, Lighting and Temporary Parking Facilities. The right to construct and maintain parking areas, lighting and temporary parking facilities necessary or desirable in marketing to prospective Lot Owners;

10.4.6 Easements. The right to establish by dedication or otherwise, or to revise, amend or relocate those easements described in this Declaration or in the recorded Plat or Plats, to the extent that they are on or within the Real Property, including if made subject to this Declaration, additional Dry Creek Subdivision Filings.

10.4.7 Dedications. The right to establish, from time to time, by dedication or otherwise, on or over the Subdivision, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Lot Owners within the Subdivision, including the Declarant.

10.4.8 Merger. The right to merge or consolidate the Subdivision with additional Dry Creek Subdivision Filings.

10.4.9 Transfer Declarant Rights and Special Declarant Rights. The right to transfer, convey or assign any and all development rights and other special Declarant rights reserved by the Declarant to any person or group of persons or entity succeeding Declarant.

10.4.10 Exercise Declarant Control. The right to exercise those powers described in this Declaration, including the right, to appoint and remove officers and members of the Board of Directors during the Declarant Control Period.

10.5 Declarant Control. The Declarant Control Period shall comply with C.R.S. 38-33.3-303.

10.6 Amendment. This Declaration may be amended only as follows:

10.6.1 By the written agreement and consent of sixty-seven percent (67%) or more of all of the votes in the Association entitled to be cast, and the recording of such amendment in the real property records of Routt County, Colorado.

10.6.2 This Declaration shall not be terminated except by the unanimous written consent of all of the Owners of record of all of the Lots in the Property; or by Declarant during the Declarant Control Period for the following purposes; (i) for any reason and with respect to any Section or provision herein, but only if such amendment or alteration is made and recorded prior to the conveyance of the first Lot in the Subdivision; or (ii) to expand the Subdivision to include additional Lots pursuant to Article 1.

10.6.3 In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to such amendments or supplemental declarations on behalf of each Owner, subject to the Act. Each deed, mortgage, or other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to, the reservation of the Declarant rights to make or consent to such amendments or supplemental declarations during the period of such Declarant rights. No such amendment or supplemental declaration made by Declarant shall impair the lien of a First Mortgage upon any Lot or any warranties made by an Owner or Mortgagee in order to induce

any of the above agencies or entities to make, purchase, insure or guarantee a mortgage on such Lot.

10.7 Limitation on Liability. The Declarant and the Association shall exercise their own judgment in administering, enforcing and interpreting the provisions of this Declaration and shall not be liable to any Owner or other person for actual or alleged acts or omissions, failure, mistakes in judgments or non-enforcement in connection with actions taken or admitted to be taken pursuant to this Declaration, unless such acts or omissions constitute gross negligence or a willful abuse of discretion. Notwithstanding the foregoing, the Association shall further be immune from liability to the greatest extent permitted by the Statutes of the State of Colorado as the same apply to Not for Profit Corporations, as amended from time to time.

10.8 Arbitration. In case of any claim or dispute between the Declarant, its builder, general contractor, broker, its agents or employees, on the one hand and any Lot Owner(s) on the other hand, which claim or dispute relates to the right and/or duties of the parties under the Governing Documents, or relates to the design or construction of the Subdivision or any part thereof, the procedure shall be as follows:

10.8.1 The aggrieved party or parties shall notify the other party or parties of the grievance, in writing. When the aggrieving party receives such a notice, it shall promptly respond with an investigation, inspection meeting, discussion, or other action reasonably appropriate to the circumstances. Appropriate action shall include, without limitation, prompt communication with the aggrieved party or parties, and a proposed course of action to resolve the problem. All parties involved in the matter shall negotiate in a good faith attempt to amicably resolve the problem. If the parties are unable to resolve the problem within a reasonable period of time (not to exceed ninety (90) days after the first notice of claim or dispute) the matter shall be submitted to binding arbitration pursuant to the applicable rules of the American Arbitration Association, with one arbitrator to be chosen by mutual agreement of the parties, or in the event that the parties cannot agree on one arbitrator, then each party shall designate one arbitrator and all such designated arbitrators shall designate one arbitrator to arbitrate the dispute.

10.8.2 If the dispute or claim involves a sum not in excess of the then jurisdictional limit of the Small Claims Court of Routt County, the aggrieved party shall have the option of taking the matter to Small Claims Court in lieu of binding arbitration.

10.8.3 The foregoing shall not be required if the potential harm or damage requires injunctive or immediate relief, in which event the aggrieved or injured party may so apply to the Court having jurisdiction thereafter. Provided, however, all claims for damages shall be determined by the above arbitration process.

10.9 Conflict of Provisions. In case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

10.9 Conflict of Provisions. In case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

10.10 Miscellaneous. Invalidation of any one of the provisions of this instrument by or court order, or decree shall in no way affect any of the other provisions, which shall remain in full force and effect. The headings are informational only and do not amplify or limit section provisions. Use of any pronoun herein shall be deemed to include all other pronouns, where appropriate, and the singular shall be deemed to include the plural, and vice versa, where appropriate. This Declaration shall be construed in accordance with Colorado law.

Executed this 8 day of FEBRUARY, 2008.

VILLAGE AT DRY CREEK, LLC

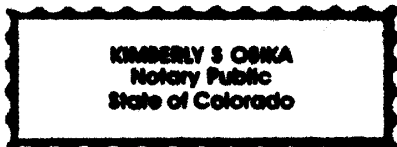
By:   
James C. Woods, Manager

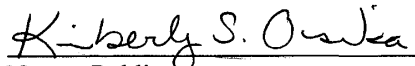
STATE OF COLORADO    )  
  ) ss.  
City COUNTY OF DENVER    )

Subscribed, sworn to and acknowledged before me this 8<sup>th</sup> day of February, 2008 by James C. Woods, Manager, Village at Dry Creek, LLC.

My Commission expires: 6-14-2011.

WITNESS my hand and official seal.



  
Notary Public

Orchard Mesa Estates I, L.P., a Colorado limited partnership

BY: Its General Partner

BJCON, LLC, A Colorado limited liability company

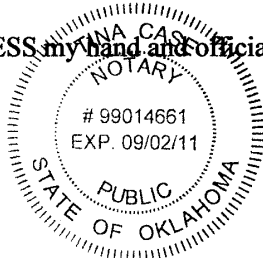
Connie Edwards Robison  
Connie Edwards Robison fka Connie Mockelmann, Manager

STATE OF Oklahoma )  
 ) ss.  
COUNTY OF Meigs )

Subscribed, sworn to and acknowledged before me this 24<sup>th</sup> day of January,  
2008 by Connie Edwards Robison fka Connie Mockelmann, Manager of BJCON, LLC.

My Commission expires: 9-2-11.

WITNESS my hand and official seal.



Tina Casper  
Notary Public

**EXHIBIT A.**

**VILLAGE AT DRY CREEK SUBDIVISION  
LEGAL DESCRIPTION**

**PARCEL A:**

A parcel of land located in the SE1/4SW1/4 and SW1/4SE1/4 Section 10, Township 6 North, Range 88 West of the 6th Principal Meridian, Routt County, Colorado more particularly described as follows: Beginning at the center south 1/16th corner of Section 10 as monumented by a found 1" orange plastic cap on #5 rebar, PLS 30095 from which the South 1/4 corner of Section 10 bears S01deg44'52" W, 1318.83 feet as monumented by a found 2" aluminum cap on #5 rebar, said line being the basis of bearing for this legal description; thence S75deg25'08" W, 1268.40 feet along the south line of parcel of land described in Book 736, Page 529, reception No. 481576 known as the hill parcel in Routt County records; thence N06deg45'59" E, 350.02 feet along the west line of said parcel described in Book 736, Page 529, reception No. 481576 known as the hill parcel to a found 1" orange plastic cap on #5 rebar, PLS 30095; thence departing said west line S10deg32'03" W, 408.00 feet along a parcel of land as described by deed in Book 351, Page 402 of Routt County records to a found 1" orange plastic cap on #5 rebar, PLS 30093; thence departing said east line the following thirteen courses along the north bank of Dry Creek; thence

1. S60deg56'29" E, 69.83 feet;
2. S45deg15'19" E, 161.49 feet;
3. S46deg19'15" E, 60.76 feet;
4. N63deg53'09" E, 58.45 feet;
5. S78deg20'53" E, 57.26 feet;
6. S50deg48'50" E, 178.74 feet;
7. N83deg57'02" E, 163.72 feet;
8. N51deg22'59" E, 107.14 feet;
9. S68deg54'44" E, 116.28 feet;
10. N88deg41'00" E, 71.37 feet;
11. S76deg59'35" E, 167.02 feet;
12. S64deg35'53" E, 116.10 feet;
13. S45deg21'48" E, 107.28 feet to a point of intersection with the north-south center of section line of Section 10 from which the South 1/4 corner of Section 10 bears S01deg44'52" W, 538.42 feet; thence continuing along said north bank of Dry Creek the following four courses:

1. S45deg21'48" E, 96.63 feet;
2. S56deg44'35" E, 103.16 feet;
3. N24deg52'36" E, 100.99 feet;
4. S85deg25'45" E, 41.56 feet;

Thence departing said North bank of Dry Creek N88°06'36" E, 61.33 feet; thence N11°48'12" E, 100.00 feet; thence N10°49'56" E, 60.01 feet; thence N11°48'12" E, 110.00 feet; thence N12°34'54" W, 77.87 feet; thence 195.96 feet along a non-tangent curve to the right, having a radius of 230.00 feet, a Delta angle of 48°49'01" and a chord which bears



N27°57'06" W, 190.09 feet; thence N72°29'28" E, 30.80 feet; thence N01°26'12" E, 105.00 feet; thence N15°07'50" W, 62.60 feet; thence N01°26'12" E, 125.03 feet to a point of intersection on the South line of Valley View Business Park, thence N88°33'43" W, 243.48 feet along the south line of Valley View Business Park to the Point of Beginning.

County of Routt, State of Colorado

**PARCEL B:**

A parcel of land located in the SE1/4SW1/4 and in the SW1/4SE1/4 of Section 10, Township 6 North, Range 88 West of the 6th P.M., Routt County, State of Colorado being more particularly described as follows:

Commencing at the center South 1/16th corner of Section 10 as monumented by a 1" orange plastic cap on #5 rebar, PLS 30095 from which the S1/4 corner of Section 10 bears S01°44'52" W, 1318.83 feet as monumented by a 2" Aluminum cap on #5 rebar, illegible, said line being the basis of bearing for this legal description:

Thence S88°33'43" E, 243.48 feet along the South line of Valley View Business Park Final Plat as recorded at Reception No. 631598 of Routt County Records to the point of beginning; thence continuing along said south line of Valley View Business Park S88°33'43" E, 889.67 feet to a point of intersection on the West Right of way of Routt County Road 37 as monumented by a 1 1/2" orange plastic cap on #5 rebar, PLS 30095;

thence along the West right of way of said Routt County Road 37 the following three courses:

1. S10°13'27" E, 28.73 feet to a point of curvature;
2. 703.34 feet along a tangent curve to the left, having a radius of 1400.00 feet, a delta angle of 21°36'43" and a chord which bears S24°36'59" E, 695.97 feet to a point of tangency;
3. S39°00'31" E, 375.77 feet;

Thence departing said right of way S00°58'07" W, 283.76 feet; thence N88°25'06" W, 809.53 feet; thence N01°34'54" E, 103.08 feet to a point on the North bank of Dry Creek; thence along the North Bank of Dry Creek the following ten courses;

1. N05°01'18" W, 47.24 feet;
2. N49°01'11" W, 38.25 feet;
3. N59°40'24" W, 123.06 feet;
4. N81°21'27" W, 58.96 feet;
5. S48°01'27" W, 114.04 feet;
6. N73°08'06" W, 40.90 feet;
7. N65°17'56" W, 140.38 feet;
8. N10°48'30" W, 36.38 feet;
9. N26°55'19" W, 62.21 feet;
10. N59°52'07" W, 189.67 feet;

Thence departing said North bank of Dry Creek N88°06'36" E, 61.33 feet;

thence N11°48'12" E, 100.00 feet;

thence N10°49'56" E, 60.01 feet;

thence N11°48'12" E, 110.00 feet;

thence N12°34'54" W, 77.87 feet to a point of curvature;  
thence 195.96 feet along a non-tangent curve to the Right, having a radius of 230.00 feet, a delta  
angle of 48°49'01" and a chord which bears N27°57'06" W, 190.09 feet;  
thence N72°29'28" E, 30.80 feet;  
thence N01°26'12" E, 105.00 feet;  
thence N15°07'50" W, 62.60 feet;  
thence N01°26'12" E, 125.03 feet to a point of intersection with the South line of the said Valley  
View Business Park Final Plat and the point of beginning.

County of Routt, State of Colorado

**EXHIBIT B.**

**VILLAGE AT DRY CREEK SUBDIVISION  
ARCHITECTURAL REVIEW GUIDELINES**

These Guidelines provide a framework for the Committee to review, process and approve residential construction in the Property. An Owner must comply with the following procedures to secure necessary approvals, as well as all Town of Hayden planning, zoning and building code requirements. An Owner should reply in writing to any concerns expressed by the Committee during the Review Process.

No building or other structure shall be constructed, erected or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until the following plans and specifications have been submitted to the Committee and by it approved in writing as follows:

- a. Location on lot
- b. Floor plans and elevations
- c. Landscaping, drainage and grading plans
- d. Provisions for off street parking and locations of driveway access
- e. Snow storage
- f. Specifications of principal exterior materials and color schemes
- g. Drawings of the locations, character and method of utilization of all utilities

Owners of lots within the Subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid withholding or delay in approval. Such plans and specifications shall be deemed approved thirty (30) days after delivery of the same to all members of the committee if not specifically approved or disapproved in writing within such thirty (30) day period. Compliance with the spirit of these Guidelines is crucial to the mutual enhancement and protection of the qualities of the Property and to all the Owners' commitment to the preservation of this quality subdivision. "Spirit of these Guidelines" shall include, but not be limited to, staggering garage frontages, reducing garage only front designs and mitigating with landscaping the tunnel effect created by certain housing designs.

These Guidelines are subject to the Committee's supervision and approval and to the zoning and planning regulations of The Town of Hayden, Colorado, the County of Routt where applicable and applicable federal and state statutes, rules and ordinances. Final judgment of any submission must remain discretionary to the Committee, the Committee will be guided in its decisions by the Declarations for Dry Creek Subdivision. These Guidelines may be changed from time to time by the Board of Directors to reflect new experiences and to accommodate changing conditions without modifying the overall stated intent. Owners contemplating activities covered by these Guidelines should be sure they have obtained the most recent approved version.

Address all written submittals to Dry Creek Subdivision Architectural Committee, c/o Set Five LLC, POB 9911, Denver, Co. 80209. Submitted documents should be reproducible for ease of

Committee review and may be to the scale set forth below or as required by the Town of Hayden.

All Committee approvals shall be valid for a period of one (1) year from the date of issue. If construction of an approved structure has not commenced within said period, the Review Process must be started anew.

1. Orientation Meeting and Statement of Design Intent (Discretion with Committee)

Purpose: To ensure familiarity with the Guidelines and communicate the Owner's design intentions to the Committee.

Composition of Meeting: A meeting between the Committee or its Chairman and the Owner and his architect to address applicable standards and constraints.

Form of Submittal:

- a. Completed "Review Request Form" as attached hereto.
- b. Two copies of a written and/or graphic explanation to include the design approach, citing philosophy, and materials to be used.
- c. Two copies of a preliminary site plan (Scale 1/8"=1') to include building location, driveway, parking, grading, tree locations and any other explanatory materials the Owner may wish to submit.

2. Sketch Plan Review

Purpose: To communicate to the Committee through drawings and related materials the Owner's design and conformance to the Guidelines.

Note: An Owner who submits combined preliminary and working drawings does so at his own risk. If the Committee requires material changes, a resubmittal evidencing such changes must be presented to the Committee.

Form of Submittal: Two copies of the following items:

- a. Lot plan (Scale 1/8"= 1') to include, but not be limited to, building location, driveway, parking, grading, tree locations identified for removal or protection by snow fencing, designated storage areas for excess fill, construction debris and materials, a designated parking area for construction vehicles, other temporary structures to facilitate construction, existing and proposed contour lines at 2' intervals, decks, utilities and accessory development of any kind.
- b. Floor plans, roof plans, building sections (1/4" = 1').

- c. Exterior elevations (1/4"=1') to include existing and proposed grade levels, material and color indications.
- d. Schematic landscape plan to include existing and proposed plant material.

### 3. Construction Plan (Working Drawings) Review

Purpose: To ensure working drawings conforming with the approved Sketch Plan. Preliminary design changes should be clearly delineated.

Form of Submittal:

Two copies of the following items:

- a. Lot plan 1/8" = 1' ; Lot plan and roof plan at 1" = 100'.
- b. Floor plans, roof plans, exterior elevations, details, building sections at 1/4" = 1'.
- c. An explanation (8-1/2" x 11") of exterior materials, colors, texture.
- d. Site staking" of building corners, driveway, other improvements.
- e. A construction schedule to include starting and completion dates of the building.

Construction plans and documents must be approved in writing by the Committee prior to submission to the Town of Hayden or Rout County) for a building permit. (See Attached Form)

### 4. Construction Progress Review

A Committee member or its agent may but is not required to periodically visit the construction site to monitor compliance with the approved Construction Plans and the Construction Period Regulations. Any items of non-compliance will be immediately corrected or removed by the Owner or his representative.

### 5. Project Completion Review

The Owner or his representative shall inform the Committee in writing ten (10) days prior to the occupancy permit inspection by the Building Inspection Authority. The Committee shall then schedule an on-site meeting with the Owner and/or his representative to review the construction to ensure the final exterior building form is substantially in accordance with the approved contract documents. Non-conforming Improvements identified by the Committee shall be promptly removed or corrected by the Owner or his representative.

(end of Guidelines)

Village at Dry Creek Property Owners Association, Inc.  
ARCHITECTURAL CONTROL COMMITTEE

**REVIEW REQUEST FORM**

Lot: \_\_\_\_\_

**Lot Owner**

Name \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
Phone Numbers (home) \_\_\_\_\_ (business) \_\_\_\_\_ (fax) \_\_\_\_\_

Lot \_\_\_\_\_ Block \_\_\_\_\_ Lot Address \_\_\_\_\_  
Livable Area of Proposed Home Square Foot: \_\_\_\_\_  
Lot Square Footage \_\_\_\_\_

**Owner's Representative (if applicable)**

Name \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
Phone Numbers (home) \_\_\_\_\_ (business) \_\_\_\_\_ (fax) \_\_\_\_\_  
(cell) \_\_\_\_\_

**Architect**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone Numbers (home) \_\_\_\_\_ (business) \_\_\_\_\_ (fax) \_\_\_\_\_

**Builder**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone Numbers (home) \_\_\_\_\_ (business) \_\_\_\_\_ (fax) \_\_\_\_\_  
(cell) \_\_\_\_\_

**Purpose of Review**

- ☐ Sketch Plan Review  
☐ Construction Plan Review  
☐ Project Completion Review  
☐ Improvements/Additions

**Dates of Meetings**

Sketch Plans Approved \_\_\_\_\_  
Construction Plans Approved \_\_\_\_\_  
Completion Approval \_\_\_\_\_  
Fees: \$250

\_\_\_\_\_  
Property Owner or Representative Date

**Exhibit C**

Village at Dry Creek Subdivision, Town of Hayden, Colorado  
Village at Dry Creek Property Owners Association, Inc.  
Architectural Control Committee  
P.O. Box 9911, Denver, Colorado 80209  
1679 S. Washington St., Denver, Colorado 80209  
(719) 510-8778 phone  
(719) 634-4796  
JWoodsOil@aol.com

Date: \_\_\_\_\_

To: Official Responsible for Building Permits for the Village at Dry Creek Subdivision, Town of  
Hayden:

Address:

Re: Lot Number \_\_\_\_\_, Block Number \_\_\_\_\_, Filing Number \_\_\_\_\_ Village at Dry Creek  
Subdivision, Hayden, CO.

Owner \_\_\_\_\_

On the above date, the Architectural Committee of The Village at Dry Creek Property Owners  
Association has authorized me to certify that the Committee has approved the attached Plans and  
Specifications for Construction Working Drawings in accordance with the Declarations for  
Village at Dry Creek Subdivision, Town of Hayden, Colorado.

Very truly yours,

\_\_\_\_\_  
Authorized Committee Member

**Exhibit D**

Village at Dry Creek Subdivision, Town of Hayden, Colorado  
Village at Dry Creek Property Owners Association, Inc.  
Architectural Control Committee  
P.O. Box 9911, Denver, Colorado 80209  
1679 S. Washington St., Denver, Colorado 80209  
(719) 510-8778 phone  
(719) 634-4796  
JWoodsOil@aol.com

Date: \_\_\_\_\_

To: Official Responsible for Certificates of Occupancy

Address

Re: Lot Number \_\_\_\_\_, Block Number \_\_\_\_\_, Filing Number \_\_\_\_\_ Village at Dry Creek  
Subdivision, Hayden, CO.

Owner \_\_\_\_\_

On the above date, the Architectural Committee of The Village at Dry Creek Property Owners Association has authorized me to certify that the Committee has reviewed the Project on the above Lot and certifies that the Construction is in reasonable conformance to the Construction Drawings approved by the committee.

Very truly yours,

\_\_\_\_\_  
Authorized Committee Member



**EXHIBIT E.**

**VILLAGE AT DRY CREEK SUBDIVISION  
(TITLE COMMITMENT EXCEPTIONS)**

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land, and that is not shown by the public records.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

Note: The above exception will not appear on policies where closing and settlement has been performed by the Company.

6. Taxes due and payable; and any tax, special assessments, charge or lien imposed for water or sewer service, or for any other special taxing district.
7. Lack of a right of access from the land to any open public road, street or highway.  
**(Affects Parcel A Only)**

NOTE: This exception is necessary because it does not appear from the instruments in the office of the Clerk and Recorder of Routt that any right of access exists to an open public roadway.

8. Any loss or damage arising from the fact that the fence lines on or near the perimeter of subject property do not coincide with the exact property lines including but not limited to the encroachment of fences as shown on Land Survey Plat dated December 7, 2004 prepared by Landmark Consultants, Inc., Job No. 1408-003.
9. Reservations of (1) right of proprietor of any penetrating vein or lode to extract his ore; and (2) right of way for any ditches or canals constructed by authority of the United States, in U.S. Patent recorded March 7, 1913 in Book 77 at Page 61
10. The traverse and right of way of the Walker Irrigating Ditch.
11. One-half interest in all oil, gas, coal and other mineral rights, in a deed recorded May 20, 1946 in Book 221 at Page 68, and any interests therein or rights thereunder.
12. Three-fourths interest in all oil, gas, coal and other mineral rights, in a deed recorded September 8, 1948 in Book 233 at Page 78, and any interests therein or rights thereunder.

13. Easements and rights of way for the Dry Creek Diversion by virtue of Water Ruling recorded November 23, 1981 in Book 551 at Page 358.
14. Right(s) of way, including its terms and conditions, whether in fee or easement only, as granted to Yampa Valley Electric Association, Inc., as described in instrument recorded April 27, 1990 in Book 653 at Page 820.
15. Right(s) of way, including its terms and conditions, whether in fee or easement only, as granted to Yampa Valley Electric Association, Inc., as described in instrument recorded March 7, 1996 in Book 718 at Page 211.
16. Terms, agreements, provisions, conditions and obligations as contained in Dry Creek Village Annexation Plat and Annexation Agreement recorded February 9, 2007 at Reception No. 652039 and 652040.
17. Deed of Trust from Hayden Property Corp., a Colorado corporation to the Public Trustee of the County of Routt for the use of First National Bank of the Rockies to secure \$2,340,015.00, dated August 8, 2007 and recorded August 13, 2007 at Reception No. 662229. **(Affects Parcel B Only)**

NOTE: Disbursers Notice recorded August 13, 2007 at Reception No. 662230, given in connection with the above Deed of Trust.

18. Financing Statement from Village at Dry Creek, LLC, debtor to First National Bank of the Rockies, secured party, recorded August 13, 2007 at Reception No. 662231. **(Affects Parcel B Only)**