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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WILD POINTE RANCH

THIS DOCUMENT WAS DRAFTED BY,
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EXHIBIT B MANDATORY DISPUTE RESOLUTION

EXHIBIT C EASEMENTS AND OTHER MATTERS OF RECORD



**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WILD POINTE RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WILD POINTE RANCH is made as of this 23 day of November, 2008, by Wild Pointe Partners, Inc., a Colorado corporation ("Declarant").

**ARTICLE I
GENERAL**

1.1 Purposes. This "Declaration" (as defined below) is executed in order to impose upon certain real property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of such property, and to establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of such property. In furtherance thereof, this Declaration provides for the creation of Wild Pointe Ranch Homeowners Association to administer and enforce the provisions of this Declaration, the Design Guidelines, the Bylaws and the Rules.

1.2 Declaration. Declarant, for itself and its successors and assigns, hereby declares that all of the Property (as defined below) shall, from and after the date hereof, constitute a planned community (as defined by the Act) and shall be held, conveyed, encumbered, leased, improved, used, and occupied subject to the covenants, conditions, restrictions, reservations, and easements set forth in this Declaration. This Declaration shall: (i) run with the Property; (ii) bind any Person having or acquiring any right, title or interest in any portion of the Property; (iii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon and be enforceable by Declarant and its successors in interest and assigns, each Owner and its heirs, successors in interest and assigns, and the Association and its successors in interest.

1.3 Exhibits. The following exhibits are attached to and, by this reference, incorporated as part of this Declaration:

- Exhibit A** Legal Description of the Property
- Exhibit B** Mandatory Dispute Resolution
- Exhibit C** Recorded Easements and Other Matters of Record

ARTICLE II DEFINITIONS

The following terms shall have the meanings set forth below when used herein.

2.1 Act. The Colorado Common Interest Ownership Act, codified at C.R.S. § 38-33.3-101 et seq., as it may be amended from time to time, and any statute, which from time to time may replace the same.

2.2 Adjacent Property. Real property abutting the Wild Pointe PUD as described on the Plat.

2.3 Architectural Review Committee. The committee formed pursuant to Section 11.2, which committee shall have exclusive jurisdiction over all construction, alteration and removal of Improvements on any portion of the Property.

2.4 Assessment. An assessment that is levied by the Association on one or more Lots pursuant to the terms of this Declaration.

2.5 Association. Wild Pointe Ranch Homeowners Association, a Colorado nonprofit corporation, whose address is 2125 S. Valentia Street, Suite D, Denver, Colorado 80231, and its successors.

2.6 Board of Directors or Board. The Board of Directors of the Association.

2.7 Bylaws. The Bylaws of the Association, as amended from time to time.

2.8 Common Expenses. Except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws, including, without limitation, general administrative costs incurred by the Association.

2.9 County. The County of Elbert, State of Colorado.

2.10 Declarant. Wild Pointe Partners, Inc., a Colorado corporation, or any successor in interest or assignee who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a Recorded instrument executed by the immediately preceding Declarant.

2.11 Declarant Control Period (or Period of Declarant Control). The period beginning on the date the Association is formed and ending on the first to occur of (a) sixty (60) days after seventy-five percent (75%) of the maximum number of Lots That May Be Created have been conveyed to Owners other than Declarant; (b) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business to Owners other than Declarant or a Designated Builder; (c) two (2) years after any right to add new Lots is last exercised by Declarant; or (d) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a statement of termination recorded in the Office of the Clerk and Recorder of Elbert County, Colorado; provided, however, that in this last event, Declarant may require that,



for the balance of what would have been the Declarant Control Period had Declarant not terminated the same, certain actions of the Association or the Board, as described in an instrument recorded in the Office of the Clerk and Recorder of Elbert County, Colorado, executed by Declarant, be approved by Declarant before they become effective. During the Declarant Control Period, Declarant shall have the right to appoint and remove the Directors and the officers of the Association to the extent permitted by the Act and the members of the Architectural Review Committee as provided herein.

2.12 Declaration. This Declaration of Covenants, Conditions and Restrictions for Wild Pointe Ranch, including the Plat, as either or both of them is amended or supplemented from time to time by a Supplemental Declaration or otherwise.

2.13 Design Guidelines. The Wild Pointe Ranch Design Guidelines promulgated by the Architectural Review Committee, as such may be amended from time to time.

2.14 Designated Builder. A Person who is designated by the Declarant by an instrument duly recorded in the Office of the Clerk and Recorder of Elbert County, Colorado who purchases one or more Lots for the purpose of constructing Improvements for later sale or rental to residential consumers, for further subdivision pursuant to Sections 5.1(d) and 5.2 of this Declaration into two or more Lots, and/or for development, leasing or resale in the ordinary

2.15 Development Period. The period of time during which Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Development Period shall commence upon the recording of this Declaration in the Office of the Clerk and Recorder of Elbert County, Colorado and shall terminate thirty (30) years later unless reinstated or extended by agreement between Declarant and the Association; provided, however, that the exercise of any Special Declarant Rights pursuant to such agreement shall be subject to such terms as the Board may impose in such agreement.

2.16 Development Rights. The rights reserved by Declarant pursuant to Section 5.1.

2.17 Director. A member of the Board of Directors.

2.18 Dwelling Unit. One or more connected rooms constituting a separate, independent housekeeping unit for permanent residential occupancy by a familial group and containing at least one kitchen facility. Dwelling Unit includes "Dwelling Unit, Single Family Detached as defined in the Wild Pointe Development Guide Agreement.

2.19 Eligible Holder. A holder, insurer, grantee or beneficiary of a First Security Interest who has delivered a written notice to the Association containing its name, address, the legal description and the address of the Lot encumbered by the First Security Interest.

2.20 First Security Interest. A Security Interest that is recorded and has priority of record over all other recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments, mechanics' liens and, to the extent set forth in the Act, the Association's liens for Assessments).



2.21 Improvements. All structures, improvements and appurtenances on or to real property of every type and kind including, without limitation, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, grading, drainage facilities, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone or other utilities, as well as those construction activities necessary to build such items.

2.22 Lot. A physical portion of the Property shown on the Plat as a Lot, whether improved or unimproved, that is designated for separate ownership pursuant to this Declaration and on which at least one Dwelling Unit may be constructed pursuant to this Declaration and the Plat or other applicable zoning. "Residential Lot" as used herein shall mean and refer to those Lots in the Wild Pointe PUD as approved by the County that are designated for residential uses.

2.23 Member. A Person who is a member of the Association.

2.24 Metropolitan District. The Elbert and Highway 86 Metropolitan District and its successors and assigns.

2.25 Owner. A Person or Persons, including Declarant or a Designated Builder, owning fee simple title of record to any Lot from time to time. The term "Owner" shall include a seller under an executory contract for sale and exclude a buyer there under and shall include a landlord under a lease affecting a Lot and exclude a tenant there under.

2.26 Permittee. A Person, other than an Owner, who is a tenant or occupant of a Lot or a Person who is an agent, employee, customer, contractor, licensee, guest or invitee of an Owner or of such tenant or occupant. A Permittee may also be referred to herein as a Guest.

2.27 Person. A natural person, corporation, partnership, limited liability company, trustee, association, joint venture or any other legal entity, public or private, capable of owning real property and/or conducting business in the State of Colorado under Colorado law.

2.28 Plat. The Final Plat of Wild Pointe recorded in the Office of the Clerk and Recorder of Elbert County, Colorado on July 3, 2003 at Reception No. 436639.

2.29 Property (or Planned Community). All of the real property described on **Exhibit A**, the appurtenances thereto, and all Improvements now in place or hereafter constructed thereon known as Wild Pointe Ranch. The Property may also be referred to herein as the Planned Community.

2.30 Quorum. With respect to a meeting of the Members or the Board of Directors, that percentage or number of the Members or Directors that constitutes a quorum pursuant to the applicable provisions of the Bylaws.



2.31 Rules. The rules and regulations adopted by the Board of Directors for the regulation and management of the Planned Community as amended from time to time.

2.32 Special Declarant Rights. The rights of Declarant set forth in Article VII.

2.33 Subdivision Improvement Agreement. The Subdivision Improvement Agreement and Restriction on Conveyance Relating to the Subdivision and Development of Wild Pointe recorded in the Office of the Clerk and Recorder of Elbert County, Colorado on July 3, 2003 at Reception No. 436640.

2.34 Supplemental Declaration. An amendment to this Declaration recorded in the Office of the Clerk and Recorder of Elbert County, Colorado pursuant to this Declaration.

2.35 Taking. A taking by eminent domain or conveyance in lieu thereof.

2.36 Total Voting Units. The sum of all the Voting Units attributed to all of the Lots that are subject to this Declaration.

2.37 Voting Units. The Voting Units allocated to each Lot, as set forth in Section 3.2(a).

2.38 Water District. The Elbert and Highway 86 Water District and its successors and assigns.

2.39 Wild Pointe Development Guide Agreement. The Wild Pointe Development Guide Agreement made and entered into between the Board of County Commissioners of the County of Elbert County and Elbert and Hwy 66, LLC recorded in the Office of the Clerk and Recorder of Elbert County, Colorado on January 13, 2003 at Reception No. 428595. The Wild Pointe Development Guide Agreement controls the development of the Wild Pointe PUD as approved by the County and the Property and each Owner shall be subject to and comply with the terms contained therein.

ARTICLE III CREATION OF THE COMMUNITY

3.1 Creation. Upon the recording of this Declaration and the Plat in the Office of the Clerk and Recorder of Elbert County, Colorado, the Property shall be a "planned community" pursuant to the Act, and the name of the planned community shall be "Wild Pointe Ranch."

3.2 Allocations

(a) Allocation of Votes. In all matters submitted to a vote of the Members of the Association, each Residential Lot is allocated one vote; provided, however, that no vote shall be exercised for any Lot owned by the Association or any governmental entity.

(b) Allocation of Common Expenses. Each Residential Lot is allocated and the Owner of the Residential Lots is liable for an equal share of the Common Expenses on the

basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots in the Planned Community. All other costs and expenses of the Association are allocated among the Lots as otherwise provided in this Declaration.

ARTICLE IV USE RESTRICTIONS

4.1 Residential and Business Uses.

(a) Residential Use. Except as set forth in this Section 4.1, all areas of the Wild Pointe Ranch (which consists of those portions of the Wild Pointe Planned Unit Development designated as residential) shall be used only for residential, recreational and related purposes consistent with this Declaration.

(b) Conduct of Business Activities. No business or trade may be conducted in or from any Residential Lot, except that an Owner or occupant residing in a Residential Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activities is not apparent or detectable by sight, sound or smell from outside the Lot; (ii) the business activity conforms to all applicable zoning and other legal requirements; (iii) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

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

(d) Exceptions. Notwithstanding the above, the leasing of a Residential Lot and the management of such Lot as rental property shall not be considered a business or trade within the meaning of this Section 4.1. This Section 4.1 shall not apply to any activity conducted by Declarant or a Designated Builder approved by Declarant with respect to the development or sale of the Property, or to any activity conducted by Declarant or the Association that relates to the performance of their respective rights or obligations under this Declaration or otherwise benefits the Owners.

4.2 Leasing of Lots. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Residential Lot by any person or persons other than the Owner, for which the Owner receives any consideration or benefit including, without limitation, a rent, fee, service, gratuity or emolument. Any lease must be in writing. The Owner must make available to the lessee copies of this Declaration, the Bylaws and the Rules.

4.3 Subdivision of Lot: Time-Sharing. No Lot shall be subdivided or its boundary lines changed except pursuant to the terms and limitations herein, or the exercise of Development Rights by Declarant. No Residential Lot shall be made subject to any type of time-sharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

4.4 Unightly or Unkempt Conditions. All portions of a Lot outside of enclosed structures shall be kept in a clean, healthy, safe and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Lot which, in the determination of the Board, causes an unclean, unhealthy, unsafe or untidy condition to exist or is obnoxious to the senses. Any structures, equipment or other items which may be permitted to be erected or placed on the exterior portions of Lots shall be kept in a neat, clean and attractive condition and shall promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty or dilapidated or have otherwise fallen into disrepair. No Owner or Permittee shall dump grass clippings, leaves or other debris, petroleum products, fertilizers, animal waste or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake or elsewhere on the Property, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff and such application complies with applicable law.

4.5 Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot that emits foul or noxious odors outside the Lot or creates noise or other conditions that tend to disturb the peace, quiet, safety, comfort or serenity of the occupants and invitees of other Lots. Illegal activities, and any activities which, in the reasonable determination of the Board, tend to cause embarrassment, discomfort, annoyance or nuisance to the occupants and Permittees of other Lots, shall be prohibited on the Property.

(a) Right to Farm. The properties within this subdivision are located adjacent to land utilized or zoned for agricultural operations and residents/occupants of the property may be subject to inconvenience or discomfort arising from such operations, including but not limited to: the storage and disposal of manure; the application by spraying or otherwise of agricultural chemical fertilizers, soil amendments, herbicides and pesticides; cultivation, plowing, spraying, pruning, harvesting, crop protection, shipping and processing; and the operation of machinery of any kind during any 24-hour period (including aircraft) which may generate dust, smoke, light, noise, odor and traffic. The inconvenience and discomforts associated with such agricultural operations shall not be considered a nuisance if such operations are consistent with the accepted customs and standards as established and followed by similar agricultural operations in the same locality. Residents/occupants of properties within this subdivision should be prepared to accept such inconvenience or discomfort as normal and necessary to agricultural operations.

4.6 Prohibited Conditions. The following conditions, structures and activities are prohibited on the Property unless prior approval in writing is obtained from the Architectural Review Committee:

(a) Antennas and Satellite Dishes. The Association shall have the right to regulate installation of satellite dishes, antennas, and similar devices for the transmission or reception of television, radio, satellite, or other signals provided such regulations shall comply

with the Telecommunications Act of 1996 ("Telecommunications Act") and the rules and regulations promulgated by the Federal Communications Commission ("FCC"). The installation of any antenna or satellite dish shall be subject to review by the Association, in accordance with the Design Guidelines and the Rules, provided however that at all times the Design Guidelines and the Rules governing such installation shall comply with the Telecommunications Act and the FCC rules and regulations.

(b) Air-Conditioning Units. No window air-conditioning units shall be installed. Any evaporative coolers must be approved by the Architectural Review Committee.

(c) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

4.7 Animals and Pets. Dogs, cats and customary household pets may be kept on individual Residential Lots. A maximum of two horses per Residential Lot is allowed with provision of adequate facilities for feed storage, shelter, fencing and animal waste removal by the Owner. Owners are solely responsible for collecting and removing all large animal waste from each Lot for off-site disposal. Such off-site disposal shall be not less than monthly or more frequently as deemed necessary by the Owner. Open grazing is prohibited. All animals and pets shall be confined to the area of the individual Residential Lot by fencing as defined in the Design Guidelines, electric pet control fences, or fencing acceptable to the Architectural Review Committee.

(a) Dogs shall be permitted off-leash only within fenced portions of the Residential Lot.

(b) No pet or animal may be kept which unreasonably interferes with the rights, comforts, or convenience of any other Owner or Permittee. Animals or pets allowed to roam free or which in the discretion of the Board constitute a nuisance, inconvenience or endangers the health and safety of Owners or Permittees of adjacent property shall be removed upon request of the Board. If the responsible owner fails to respond to the Board's request within a reasonable time period, the pet or animal may be removed by the Board.

(c) The Board reserves the right to make reasonable Rules for the management of animals on the Property including imposing limitations on the total number and type of animals allowed to the extent the Board deems it necessary. The Board shall have the authority to restrict or prohibit the keeping of breeds of dogs with known history of dangerous or vicious behavior.

(d) Animals shall be licensed according to County regulations and registered with the Board. The Board may fine Owners and Permittees for failure to properly register animals kept on a Lot. The keeping of any animal on any Lot shall comply with all applicable regulations and ordinances of the County.

(e) No Owner shall allow open grazing on their Lot or anywhere in the Planned Community.



4.8 Vehicles and Miscellaneous Equipment. All vehicles shall be parked in the garages and driveways serving the Residential Lots, in accordance with all applicable regulations and ordinances of the County and the County's approval of the Wild Pointe PUD, and in accordance with any rules and regulations as may be adopted by the Board. Commercial and recreational vehicles shall be stored indoors in an enclosure approved by the Board. These restrictions do not apply to commercial vehicles temporarily being used in connection with an approved activity on the Property, such as building a house or improving a road. The recreational use of snowmobiles and other off-road motorized, recreational vehicles is prohibited on the Property.

4.9 Fencing. The Metropolitan District may construct entryways, fences, fence pillars or walls. No other Owners shall construct, modify, replace, paint or obstruct any fence, fence pillars or walls except as approved by the Architectural Review Committee in accordance with the Design Guidelines.

4.10 Bodies of Water. All wetlands, lakes, ponds and streams on the Property shall be aesthetic amenities, irrigation and water storage only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of any lakes, ponds or streams on the Property.

4.11 Tents, Mobile Homes and Temporary Structures. No tent, shack, mobile home or other structure of a temporary nature shall be placed upon a Lot or any part of the Property. This prohibition shall not apply to restrict the construction or installation of temporary construction sales trailers or similar temporary structures used in connection with development and sale of the Property.

4.12 Laws and Resolutions. Every Owner and Permittee shall comply with all laws, statutes, resolutions and rules of federal, state and county governments applicable to the Property. Any violation of such may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

4.13 Occupants Bound. All provisions of this Declaration, the Design Guidelines, the Bylaws and the Rules shall also apply to all occupants of any Lot and to Permittees of any Owner or occupant. Every Owner shall cause all occupants of its Lot and its Permittees to comply with this Declaration, the Design Guidelines, the Bylaws and the Rules.

4.14 Water Rights. Each Owner acknowledges and agrees that they and their successors and assigns have no interest in or rights to any water rights associated with their Lot and the Property and no right to drill a well on their Lot or anywhere on the Property



ARTICLE V
DEVELOPMENT OF THE PROPERTY

5.1 Development Rights. Declarant hereby reserves the following Development Rights for the duration of the Development Period:

(a) Withdrawal of Property. To the extent permitted by the Act, the County, and the Wild Pointe Development Guide Agreement, Declarant reserves the right to amend this Declaration to withdraw all or any portion of the Property from the coverage of this Declaration whether such Property was originally described on **Exhibit A** or added by a Supplemental Declaration. For this purpose each portion of or tract within the Property having its own discrete legal description at the time of its inclusion within the Property, whether as a separate subdivision lot or plat or by its own metes and bounds description, shall constitute a severable portion of the Property that may be withdrawn independently of all other portions of the Property. Upon such a withdrawal, the Allocation for each remaining Lot shall be subject to recalculation pursuant to the formula in Section 3.2(b), and the amendment to this Declaration effecting the withdrawal shall reflect such recalculation. Any amendment shall not require the consent of any Person other than the owner of the portion of the Property to be withdrawn, if other than Declarant.

(b) Annexation of Other Property. Declarant reserves the right, but not the obligation, to annex additional property to the extent allowed by the Act, the County and the Wild Pointe Development Guide Agreement.

(c) Designation for Public Purposes. Declarant reserves the right to designate or dedicate sites within the Property for public or quasi-public facilities.

(d) Subdivision and Replatting. Declarant reserves the unilateral right to seek approval from the County to subdivide into additional Lots, change the boundary line of or replat any Lots or other portions of the Property owned by Declarant.

5.2 Exercise of Development Rights. Declarant shall exercise any Development Right by preparing, executing and recording a Supplemental Declaration amending the Declaration as necessary to effectuate the exercise of such Development Right, which Supplemental Declaration shall be accompanied by any amendment or supplement to the Plat required by the Act and the County. Declarant's exercise of any Development Right shall not require the consent of any other Owner except as is expressly required to the contrary by this Declaration.

5.3 Succession to Declarant's Rights and Interests. Rights and interests reserved or allocated to Declarant under this Declaration may be assigned or transferred by Declarant, at its election and in whole or in part, to a Designated Builder or other Owner or other transferee, but only by an instrument recorded in the Office of the Clerk and Recorder of Elbert County, Colorado expressly effectuating such assignment or transfer. Each transferee of any portion of the Property, by such transferee's acceptance of the transfer or conveyance of record, shall be bound by and subject to all such rights and interests in favor of the Declarant hereunder, and the foregoing provisions governing the transfer of those rights and interests. Each such transferee

and each Owner, and their successors in interest, shall be bound to execute and deliver such documents as Declarant may require from time to time to verify and to confirm the rights and interests of Declarant hereunder.

ARTICLE VI EASEMENTS

6.1 Right of Entry. Declarant reserves for the Association and other Persons described below an easement for the right, but not the obligation, to enter upon any Lot: (a) for emergency, security and safety reasons; (b) to inspect any Lot for the purpose of ensuring compliance with this Declaration, the Design Guidelines, the Bylaws and the Rules; and (c) to remove nonconforming Improvements as provided in Section 11.7. Such right may be exercised by any member of the Board and the Association's officers, agents, employees and managers, the members of the Architectural Review Committee and, for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure such condition within a reasonable time after requested by the Board, but this right of entry shall not authorize entry into any Dwelling Unit without permission of the occupant, except by emergency personnel acting in their official capacities.

6.2 Easements for Water Use and Development and Flood Control. Declarant reserves for itself and its successors, assigns including the Water District and/or the Metropolitan District, and designees, for the duration of the Development Period, and Declarant hereby establishes and grants to the Association in perpetuity, the nonexclusive right and easement, but not the obligation, to enter upon any lakes, reservoirs, ponds, streams, drainage ditches, irrigation ditches and wetlands: (a) to alter drainage and water flow; (b) to construct, maintain, operate and repair any bulkhead, wall, dam or other structure retaining water; (c) to develop, maintain, rehabilitate, restore, repair and protect wetlands, shorelines, beaches, waterways and other lakefront and reservoir-front areas; and (d) to remove trash and other debris therefrom. Such easement shall include an access easement over and across the Property, to the extent reasonably necessary to exercise rights granted under this Section 6.2, and in order to maintain and landscape the slopes and banks pertaining to such lakes, reservoirs, ponds, streams, drainage ditches and wetlands. To the extent the exercise of such easement is anticipated to materially diminish the value of or unreasonably interfere with the use of any Lot, the consent of the Owner of such Lot shall be required before such exercise. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

6.3 Additional Easements.

(a) Declarant's Right to Grant Easements. Declarant hereby reserves the non-exclusive right and power to grant, during the Development Period, such additional specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any of the Property.



(b) Trail Easements. There shall be trail easements throughout the Property for the construction and maintenance of trails by the District. The trail easements shall be identified on the Plat.

(c) Road Easements. The Property and the Lots are subject to those roads and roadway easements and other future roadways and roadway easements for the benefit of the Metropolitan District as shown on the Plat, which easements include but are not limited to the rights of the Metropolitan District to construct, maintain and repair such roads.

6.4 Easements Run with Land. Except as otherwise provided in this Article VI, all easements established and granted pursuant to this Article VI are appurtenant to and run with the Property and will be perpetually in full force and effect so long as this Declaration is in force and will inure to the benefit of and be binding upon Declarant, the Association, Owners, Permittees and any other Persons having any interest in the Property or any part thereof. The Lots will be conveyed and encumbered subject to all easements set forth in this Article VI, whether or not specifically mentioned in such conveyance or encumbrance.

6.5 Recording Data Easements. The Property is subject to those easements and other matters of record as set forth in **Exhibit C** attached hereto.

ARTICLE VII **SPECIAL DECLARANT RIGHTS**

7.1 Special Declarant Rights. In addition to and without limiting any other right reserved by or for the benefit of Declarant in this Declaration or by operation of the Act (all of which shall also be Special Declarant Rights), Declarant reserves the following Special Declarant Rights, that, except as expressly provided below, may be exercised by Declarant for the duration of the Development Period, with no limitations on the extent to, or the order in which, such rights are exercised:

- (a) To exercise any of the Development Rights;
- (b) To maintain sales, construction and management offices and advertising signs on the Property and/or the Adjacent Property or any lands that may be added to the Property;
- (c) To merge or consolidate the Association with another common interest community of the same form of ownership; and
- (d) To appoint and remove the Directors and the officers of the Association during the Declarant Control Period to the extent permitted by the Act.

7.2 Transfer of Special Declarant Rights. Declarant may transfer any or all of the Special Declarant Rights in accordance with Section 304 of the Act.

7.3 Models and Offices. During the Development Period, Declarant and Designated Builders authorized by Declarant may maintain and carry on upon any Lot owned by Declarant



(or any other Lot with consent of its Owner) such facilities and activities as, in the reasonable opinion of Declarant, and as approved by the County, may be required, convenient or incidental to the development, construction or sale of Lots, including, without limitation, business offices, construction offices, management offices, signs, model units and sales offices. Such facilities may be of a number, size and location that Declarant determines shall adequately accommodate Declarant's or a Designated Builder's development, sale and marketing of the Lots and the Property. Notwithstanding anything in this Declaration to the contrary, each Designated Builder shall have the right to maintain models and sales offices on any Lot owned by such Designated Builder subject to the written approval of the Declarant.

7.4 Other Covenants and Subsidiary Declarations. During the Development Period, no Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument affecting any portion of the Property, including, without limitation, a subsidiary declaration, without Declarant's review and written consent, which consent may be granted or withheld in Declarant's sole and absolute discretion. Any attempted recording of such an instrument without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by a written consent signed by Declarant and recorded in the Office of the Clerk and Recorder of Elbert County, Colorado.

ARTICLE VIII THE ASSOCIATION

8.1 Formation; Membership. The Association will be formed no later than the date the first Lot is conveyed to an Owner other than Declarant. Every Owner, including Declarant, shall be a Member of the Association. When an Owner consists of more than one Person, all such Persons will, collectively, constitute one Member of the Association and all such Persons shall be jointly and severally obligated to perform the responsibilities of Owner. Following a termination of this Declaration, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Property. Membership in the Association will automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association will recognize a new Owner as a Member upon presentation of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Lot to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Lot. Any attempted prohibited transfer of a membership in the Association will be void and will not be recognized by the Association.

8.2 Board of Directors. The affairs of the Association shall be governed by the Board of Directors, which may, by resolution, delegate any portion of its authority to an executive committee or an officer, managing agent or Director of the Association. The Board may exercise all rights and powers of the Association without a vote of the Members, except as is otherwise specifically provided by law or in this Declaration, the Articles or the Bylaws. Subject to the provisions of this Section 8.2 and Section 7.1(d), the qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be appointed or elected and the manner in which Directors shall be replaced upon removal or resignation shall be



as set forth in the Bylaws. In the performance of their duties, the Directors will act according to their ordinary business judgment, except to the extent the Act requires a greater standard of care.

8.3 Association Powers. Subject to the rights, powers and authority reserved by and conferred on Declarant pursuant to this Declaration or the Act, the Association will serve as the governing body of Wild Pointe Ranch and shall have the powers and duties set forth in this Declaration and the Bylaws. The Association may:

- (a) Adopt and amend the Bylaws, and make and enforce the Rules, consistent with the rights, duties, terms and conditions established by this Declaration and the Bylaws;
- (b) Adopt and amend budgets for revenues, expenditures and reserves and assess and collect any Assessments and any other amounts due from Owners or others to the Association;
- (c) Hire and terminate managing agents and other employees, agents and independent contractors;
- (d) Appoint the members of the Architectural Review Committee, except as such power and right is reserved to Declarant as provided herein;
- (e) Exercise any of the enforcement powers set forth in this Declaration;
- (f) 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 the Property;
- (g) Make contracts and incur liabilities in accordance with the properly adopted and ratified budget;
- (h) Borrow funds to cover Association expenditures and pledge Association assets as security therefor;
- (i) Cause additional Improvements to be made in accordance with the properly ratified budget, or otherwise in accordance with this Declaration;
- (j) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property;
- (k) Impose and receive any payments, fees or charges for any services provided to Owners;
- (l) Impose charges and interest for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after providing notice and an opportunity to be heard, as provided in the Bylaws, levy reasonable fines for violations of this Declaration, the Bylaws or the Rules;



- (m) Impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;
- (n) Provide for the indemnification of its officers and directors as provided in the Bylaws or the Articles and maintain directors' and officers' liability insurance;
- (o) Assign its right to future income, including the right to receive Assessments;
- (p) Exercise any other powers expressly conferred by this Declaration, the Bylaws or the Act or reasonably implied from or necessary to effectuate such powers;
- (q) Except as prohibited by the Act, exercise all other powers that may be exercised in the State of Colorado by a nonprofit corporation;
- (r) Exercise all powers delegated to the Association by any subsidiary association pursuant to Section 220 of the Act; and
- (s) Exercise any other powers necessary or appropriate for the governance and operation of the Association.

This Declaration may not and is not intended to impose any limitations on the powers of the Association to deal with the Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with any other Person.

8.4 Bylaws. The Association may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration or the Act. The Bylaws may include, without limitation, provisions regarding the voting rights of the Owners, the appointment or election of the Board, and the appointment or election of officers of the Association.

8.5 Enforcement.

(a) Sanctions and Self-Help. After notice and an opportunity to be heard as provided in the Bylaws, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines) for violations of this Declaration, the Bylaws or the Rules; (ii) exercise self-help to cure any violations of this Declaration, the Bylaws or the Rules that an Owner or Permittee fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than fifteen (15) days delinquent in paying any Assessment or other charge due to the Association. All of the remedies set forth in this Declaration and the Bylaws shall be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of this Declaration, the Bylaws or the Rules, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred by it in such action.



(b) No Waiver. In no event shall the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws or the Rules constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

ARTICLE IX FINANCIAL MATTERS AND ASSESSMENTS

9.1 Financial Matters. The Board, on behalf of the Association, will discharge the following obligations with respect to financial matters:

(a) Books and Records. The Board will cause to be maintained full and complete books and records of the Association's business and operations, including, without limitation, current copies of this Declaration and all amendments hereto, the Bylaws, the Rules, the approved budget for the current fiscal year, financial statements, books and records reflecting all assets, liabilities, capital, income and expenses of the Association, and supporting materials, such as bank statements and invoices, for at least the shorter of (i) the prior seven (7) fiscal years or (ii) all of the fiscal years in which the Association has been in existence. All of such books and records will be made available for inspection by any Owner or Eligible Holder or their respective authorized representatives during normal business hours upon reasonable prior written request.

(b) Returns. The Board will cause to be prepared and filed before delinquency any and all tax, corporate or similar returns or reports that the Association is required by law to prepare and file.

(c) Budget. The Board shall cause to be prepared at least sixty (60) days prior to the commencement of each calendar year, a budget (the "Budget") for the calendar year. Within thirty (30) days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget, not less than fourteen (14) days nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting sixty-seven percent (67%) of the Owners present who are entitled to vote reject the Budget, the Budget shall be deemed ratified, whether a quorum is present or not. In the event that the Budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

If the Board of Directors deems it necessary or advisable to amend a budget that has been ratified by the Owners pursuant to Section 9.1(c) above, the Board may adopt a proposed amendment to the budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days, nor more than sixty (60) days, after the delivery of the summary of the proposed amendment. Unless at that meeting Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated reject the amended budget, the amended budget shall be deemed ratified whether or not a quorum is present.



(d) Annual Financial Statements. With respect to each fiscal year in which the Association levies Assessments, the Board will cause to be prepared annually a report that fairly represents the financial condition of the Association. Such report shall consist of a balance sheet as of the end of the preceding fiscal year, an operating (income) statement for such fiscal year and a statement of changes in the Association's financial position for such fiscal year. A copy of such annual report will be distributed to each Owner within 120 days after the close of the fiscal year.

9.2 Creation of Assessments. There are hereby created assessments for such Association expenses as may be authorized from time to time pursuant to this Declaration. Each Owner, by accepting a deed for any Lot, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration.

9.3 Assessments. Each Lot is subject to Assessments for the Lot's share of the Common Expenses as allocated pursuant to Section 3.2(b). Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. The Association shall set the Assessments for each fiscal year at a level which is reasonably expected to produce total income for the Association for such fiscal year equal to the total Expenses set forth in the budget adopted by the Board and ratified by the Owners. In determining the total funds to be generated through the levy of Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Assessments during the fiscal year.

(b) Reconciliation. As soon as reasonably possible after the end of each fiscal year, the Board will cause the actual Common Expenses incurred by the Association during such fiscal year to be reconciled against the Assessments received by the Association from the Owners. To the extent that any Owner has paid more than its allocation of such actual Common Expenses, the Board may either refund the overpayment to the Owner or credit such overpayment against such Owner's obligation for Assessments for the next ensuing fiscal year. To the extent any Owner has underpaid its Allocation of such actual Common Expenses, the Board may either demand in writing that such Owner pay the amount of such underpayment of Assessments to the Association within a specified period of time, as determined by the Board, after the Board notifies such Owner of such underpayment (which period of time may not be less than thirty (30) days), or the Board may include such underpayment in such Owner's obligations for Assessments for the next ensuing fiscal year.

(c) Material Increase. Notwithstanding any other provision of this Section 9.3, after the Board establishes Assessments for the Association's first fiscal year, the Board may not increase Assessments for any subsequent fiscal year by an amount that causes the Assessments levied against any Lot to increase by more than twenty-five percent (25%) over the Assessments levied against such Lot in the prior fiscal year unless such increase is approved by the affirmative vote of sixty-seven percent (67%) of the votes in the Association and by a majority of holders of First Security Interests. Any increase in the Assessments levied against a Lot pursuant to Section 9.4 shall not be counted for the purposes of this Section 9.3(c).



9.4 Specific Assessments. The Association shall have the power to levy Specific Assessments against one or more particular Lots as follows:

(a) To cover the costs, including overhead and administrative costs, of providing benefits, items or services to such Lot or occupants thereof, upon request of the Owner of such Lot pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance, snow removal and animal waste removal), which Specific Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Association;

(b) To cover liabilities and costs (including, without limitation, attorneys' fees) incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or the Rules, or costs incurred as a consequence of the conduct of the Owner or such Owner's Permittees (including, without limitation, any costs incurred at the election of Declarant or the Association to cure a breach or violation of any provision of this Declaration, the Bylaws or the Rules by such Owner or Permittees); provided, however, the Board shall give the Owner of such Lot notice and an opportunity to be heard as provided in the Bylaws before levying any Specific Assessment under this Section 9.4(b); and

(c) To cover costs and expenses incurred by the Association that may be levied as Specific Assessments pursuant to the express terms of this Declaration.

9.5 Owners' Obligations for Assessments.

(a) Personal Obligation. Each Assessment, together with interest computed from the due date of such Assessment at twenty-one percent (21%) per annum or such lower rate set by the Board, late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which the Assessment is made until paid. Each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, and any other obligations or liabilities imposed by or pursuant to this Declaration, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment, obligation or liability arose. No holder of a First Security Interest who becomes the Owner of a Lot by exercising the remedies provided in its Security Interest shall be personally liable for unpaid Assessments, which accrued prior to such acquisition of title. Nothing in this Declaration is intended or shall be construed to limit the liability of a First Security Interest (or its foreclosure purchaser or other successors in interest) who becomes the Owner of a Lot for any Assessments levied against such Lot while such First Security Interest is the Owner of it.

(b) Terms of Payment. Assessments shall be paid in equal monthly, quarterly or annual installments on or before the first day of each month, quarter or fiscal year, as applicable, or in such other reasonable manner as the Board may establish. The Board may grant discounts for early payment, require advance payment of Assessments at closing of the transfer of title to a Lot, and impose special requirements upon Owners with a history of delinquent payment.



(c) No Set-Off or Abatement. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action by the Association or the Board.

(i) Estoppel Certificate. Within ten (10) business days after receipt of a written request from any Owner or Eligible Holder, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association shall furnish to such Owner or Eligible Holder, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate in writing signed by an Association officer and addressed to such Owner or Eligible Holder, or the designee of either, stating any then unpaid Assessments due from, or other known defaults by, the requesting Owner or the Owner of the Lot encumbered by such First Security Interest, or stating that there are no unpaid Assessments due from, or other known defaults by, such Owner, as the case may be. Such an estoppel certificate executed in favor of an Owner, Eligible Holder or other Persons named therein who rely thereon in good faith will be conclusive upon the Association as to the matters set forth therein and such Owner's Lot will not be subject to a lien for any unpaid Assessments against such Lot arising before the date of such certificate and in excess of any unpaid amounts stated in such certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

9.6 Declarant's Obligation for Assessments. Until the Association levies Assessments, Declarant shall pay the Association's costs and expenses, however, each Designated Developer shall be responsible for their pro rata share of such Assessments for each Lot owned by the Designated Developer. After Assessments commence, Declarant's obligations for Assessments (along with any portion due by the Designated Developers) may be satisfied in the form of cash or by "in kind" contributions of services or materials to the Association, or by any combination of these.

9.7 Lien for Assessments.

(a) Perfection and Priority of Lien. The Association shall have a lien against each Lot to secure payment of delinquent Assessments, as well as interest (computed from the due date of such Assessment at a rate of twenty-one percent (21%) per annum or such lower rate set by the Board), late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees. Such lien shall be perfected upon the recording of this Declaration and no further claim of lien shall be required. Notwithstanding the foregoing and without limitation on the effectiveness or perfection of the lien against each Lot, the Association shall have the right, but not the obligation, to prepare and record a "Notice of Lien" in a form satisfactory to the Board which may set forth (i) the amount of any Assessment, charge, fine or other amount due and owing to the Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a recitation of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Lot encumbered by the lien; and (v) the name or names, last known to the Association, of the Owner of the Lot. Such lien shall be superior to all



other liens, except: the liens of all taxes, bonds, assessments and other levies which by law are superior; and, the lien or charge of any First Security Interest made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments shall be prior to a First Security Interest to the extent provided by the Act.

(b) Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Colorado. The Association may bid for a Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey such Lot. While a Lot is owned by the Association following foreclosure: (i) no right to vote shall be exercised on behalf of the Association as Owner of such Lot; (ii) no Assessments shall be levied against such Lot; and (iii) each other Lot shall be charged, in addition to its usual Assessments, its pro rata share of the Assessments that would have been charged the Lot acquired by foreclosure had such Lot not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) Transfer of Lot. The sale or transfer of any Lot shall not affect an existing lien for previous Assessments or relieve such Lot from any lien for subsequent Assessments. Upon sale or transfer of a Lot pursuant to foreclosure of a First Security Interest, the amount of Assessments included in any lien extinguished by foreclosure of a First Security Interest shall become collectible as Assessments levied against the Lots subject to Assessments, excluding, however, the Lot acquired through the foreclosed First Security Interest.

9.8 Commencement of Assessments. The obligation to pay Assessments shall commence as to each Lot on the first day of the month following the later of: (a) the month in which the Lot is made subject to this Declaration or (b) the month in which the Association first establishes and ratifies a budget and levies Assessments.

9.9 Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification or release of any Owner's obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

9.10 Exempt Property. Any property dedicated to and accepted by any governmental authority or public utility shall be exempt from Assessments.

ARTICLE X MAINTENANCE

10.1 Association's Responsibilities and Election to Perform Owners' Duties. The Association may elect to maintain or repair any Lot or portion thereof, the maintenance or repair of which is the responsibility of an Owner pursuant to Section 10.2, if (i) such Owner has failed, for more than thirty (30) days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance or repair of its Lot, and (ii) such failure has a material effect on the appearance of such Lot when viewed from any area outside such Lot



or has a material adverse effect on the use of another Lot for its permitted and intended use; provided, however, that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any repairs or maintenance if such Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. Such Owner will pay all costs (including, without limitation, reasonable attorneys fees) incurred by the Association in exercising its rights under this Section 10.1 and such costs shall be levied against such Owner as a specific assessment, after notice and hearing pursuant to the procedures set forth in the Bylaws. Such payment will be made upon receipt of a demand from the Association therefor. If an Owner fails to make such payment within thirty (30) days of receipt of a demand therefor, the Association will be entitled to take whatever lawful action it deems necessary to collect such payment including, without limitation, foreclosing its lien or instituting an action at law or in equity.

10.2 Owners' Maintenance Responsibility. Each Owner shall maintain such Owner's Lot and the Improvements thereon in a clean, safe, attractive and orderly manner and shall perform all necessary repairs of such Lot and Improvements, unless such maintenance responsibility is otherwise assumed by the Association pursuant to this Declaration or the Metropolitan District.

10.3 Trail Maintenance. The Property, including individual Lots, is burdened by trail easements as shown on the Plat for certain trails to be constructed by the Metropolitan District. The Metropolitan District shall be solely responsible for the improvement, repair and maintenance of the trails.

10.4 Landscaping. Landscaping installation and maintenance shall be the responsibility of the Owner of each Lot. Landscaping shall be completed by the Owner per the requirements of the Design Guidelines no later than twelve (12) months from the date of closing on the Lot.

10.5 Mowing and Weed Control. Each Lot Owner shall be responsible for mowing and weed control on their Lot, including maintenance and control of noxious weeds. Noxious weed control shall be accomplished by mowing and spraying per the requirements of the County, the Soil Conservation District and the Wild Pointe Development Guide Agreement.

ARTICLE XI
ARCHITECTURAL REVIEW COMMITTEE AND DESIGN GUIDELINES

11.1 General.

(a) Compliance and Approval. Subject to Section 11.1(b) and Section 11.8, no Improvements shall be constructed, installed, modified or renovated on any Lot, except in compliance with the Design Guidelines and with the prior approval of the Architectural Review Committee pursuant to this Article XI.

(b) Interior Modifications; Modifications in Accordance with Original Plans. Any Owner may remodel, paint or redecorate the interior of structures on a Lot without approval



of the Architectural Review Committee pursuant to this Article XI. However, modifications to the interior of screened porches, patios and similar portions of structures on a Lot visible from outside such structures shall be subject to such approval. No approval shall be required to repair the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) No Amendment without Declarant's Consent. This Article XI may be amended during the Development Period only with Declarant's written consent.

11.2 Architectural Review Committee. Responsibility for promulgating and enforcing the Design Guidelines and review of all applications for Improvements subject to review under this Article XI is vested in the Architectural Review Committee. For so long as Declarant (or any successor Declarant) is appointing the members of the Architectural Review Committee, it shall consist of three members, who shall be natural Persons. Thereafter the Architectural Review Committee shall consist of either three or five members, as may be determined and appointed by the Board. Until the earlier of (i) ten (10) years after the date of the initial recording of this Declaration, or (ii) one year after the Declarant (or any successor Declarant) ceases to own any Lots, Declarant shall have the exclusive right, in its full discretion, to appoint and remove all members of the Architectural Review Committee. Declarant may surrender its right to appoint the members of the Architectural Review Committee by an instrument executed by Declarant and recorded in the Office of the Clerk and Recorder of Elbert County, Colorado. After such period or upon Declarant's earlier surrender of its right to appoint and remove the members of the Architectural Review Committee, the Board shall have the exclusive right, in its full discretion, to appoint and remove the members of the Architectural Review Committee. The members of the Architectural Review Committee need not be Owners or representatives of Owners, and may, without limitation, be architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Architectural Review Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the Architectural Review Committee in having any application reviewed by architects, engineers or other professionals.

11.3 Design Guidelines.

(a) Generally. The Architectural Review Committee shall adopt the Design Guidelines at its initial organizational meeting. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions that vary according to land use and from one portion of the Property to another depending upon location, unique characteristics and intended use. The Design Guidelines shall provide guidance to Owners and Designated Builders regarding matters of particular concern to the Architectural Review Committee in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Architectural Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) Amendment. The Architectural Review Committee shall have sole and full authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall be prospective only and shall not apply to required modifications to plans or removal of



structures previously approved by the Architectural Review Committee. Other than the requirements set forth in the Wild Pointe Development Guide Agreement, there shall be no limitations on the scope of amendments to the Design Guidelines and the Architectural Review Committee is expressly authorized to amend the Design Guidelines to remove requirements previously imposed and otherwise make the Design Guidelines less restrictive or more restrictive for Improvements not yet approved by the Architectural Review Committee.

(c) Availability; Incorporated Into Declaration. The Architectural Review Committee shall make the Design Guidelines available to Owners and Designated Builders who seek to engage in development or construction on a Lot. The Design Guidelines as adopted by the Architectural Review Committee, as such may be amended from time to time, are incorporated into this Declaration by this reference as if fully set forth herein. In the event of any dispute as to which version of the Design Guidelines is in effect at any particular time, the most current version adopted by the Architectural Review Committee, as found in its books and records shall control.

(d) Other Recorded Documents. The Design Guidelines shall be automatically deemed to include any other design, construction, use or landscaping guidelines, requirements or restrictions contained in any other documents recorded in the Office of the Clerk and Recorder of Elbert County, Colorado affecting all or substantially all of the Property, including, without limitation, the Plat.

11.4 Procedures, Submittal Requirements and Decisions. The submittal requirements and process for approval of plans and specifications shall be set forth in the Design Guidelines.

11.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

11.6 Limitation of Liability. Review and approval of any application pursuant to this Article XI are made on the basis of aesthetic considerations only and the Architectural Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the Architectural Review Committee, nor any member of any of the foregoing shall be held liable for the approval or rejection of any submittal, nor any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Architectural Review Committee and its members shall be defended and indemnified by the Association as provided in the Articles.

11.7 Enforcement.

(a) Removal of Improvements. Any Improvement constructed, installed, modified or renovated on or to any Lot in violation of this Article XI shall be deemed to be nonconforming. Upon written request from the Architectural Review Committee, the Owner of



the Lot on which such Improvement is located shall, at such Owner's own cost and expense, remove such Improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work or, if applicable, cure such nonconformance by bringing the Improvement into compliance with the requirements of the Architectural Review Committee. Should an Owner fail to remove and restore or cure as required, then the Association, acting through the Board or the Architectural Control Committee, after notice and hearing pursuant to procedures contained in the Bylaws, shall have the right to enter the Lot, remove the nonconforming Improvement, and restore the Lot to substantially the same condition as previously existed. All costs of any such entry, removal and restoration, together with interest at the maximum rate then allowed by law, may be assessed against the subject Lot and collected as a specific assessment.

(b) Completion of Work. Unless otherwise specified in writing by the Architectural Review Committee, any approval granted under this Article XI shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any person fails to commence and diligently pursue to completion all approved work, the Association, acting through the Board or the Association in accordance with Section 8.5, after notice and hearing pursuant to procedures contained in the Bylaws, shall be authorized to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a specific assessment.

(c) Exclusion from Property. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article XI and the Design Guidelines may be barred from the Property by order of the Board, after notice and hearing pursuant to procedures contained in the Bylaws. The Declarant, the Association, and the officers, directors or committee members of either, shall not be held liable to any Person for exercising the rights granted by this Section 11.7(c).

(d) Legal and Equitable Remedies. In addition to the foregoing, Declarant and the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article XI and the decisions of the Architectural Review Committee.

11.8 Variances and Exemptions. The Architectural Review Committee, in its sole discretion, may: (i) permit variances from the substantive or procedural provisions of the Design Guidelines with respect to any application submitted pursuant to Section 11.4; or (ii) exempt any Lot from the requirements of the Design Guidelines.

ARTICLE XII **INSURANCE, DAMAGE AND TAKINGS**

12.1 Association's Insurance.

(a) Insurance Maintained by Association. The Association, acting through the Board or its duly authorized agent, shall maintain in effect the insurance coverage required by the Act, and such insurance coverage shall be in the forms, insure the persons, and include the



terms, waivers of subrogation and endorsements required by the Act. The Association may also obtain and maintain in effect such other insurance policies and coverage as the Board determines appropriate from time to time. Such insurance (in addition to insurance coverage required by the Act) may include but not be limited to directors and officers liability insurance, worker's compensation and employer's liability insurance in the event the Association has any employees and fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The cost of any insurance carried by the Association shall be a Common Expense and paid for out of the Assessments.

12.2 Damage and Destruction to Property Insured by Owners. Each Owner covenants and agrees that in the event of damage or destruction to structures on or comprising his Lot, the Owner shall proceed promptly to either: (i) repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI, or (ii) clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive landscaped condition. The Owner shall pay any costs of such repair and reconstruction or clearing and maintenance that are not covered by insurance proceeds.

ARTICLE XIII **FIRST SECURITY INTEREST PROVISIONS**

The following provisions are for the benefit of First Security Interests and holders, insurers and guarantors of First Security Interests on Lots. The provisions of this Article XIII apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

13.1 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Security Interest of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards.

13.2 Notice to Eligible Holder. Upon receipt by the Association of the notice described in Section 2.19, any Eligible Holder who provides such notice will be entitled to prompt written notice of:

(a) Any condemnation loss or casualty loss that affects a material portion of the Property or that affects any Lot on which there is a First Security Interest held, insured or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges levied against a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days after notice of such delinquency has been delivered to the Owner, or any other violation of this Declaration or the Bylaws relating to such Lot or the Owner or occupant thereof which is not cured within sixty (60) days of notice of such violation;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association and required by the Act.



ARTICLE XIV
GENERAL PROVISIONS

14.1 Amendment.

(a) Amendment by Declarant. Declarant may unilaterally amend this Declaration during the Development Period in the exercise of its Development Rights to the extent permitted by the Act. Additionally, notwithstanding any contrary provision contained in this Declaration, Declarant may unilaterally amend this Declaration and/or the Plat to correct any clerical, typographical or technical errors, and may unilaterally amend this Declaration 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 United States Department of Veterans Affairs, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association.

(b) Amendment by Association. Except in the case of amendments which may be executed unilaterally by Declarant, amendments that may be executed by the Association without a vote of the Members as provided in the Act and amendments that are subject to the approval of Eligible Holders pursuant to the terms of this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total number of votes in the Association and, if such amendment occurs during the Development Period, with the consent of Declarant; provided, however, that any amendment that changes the uses to which any Lot is restricted shall require the affirmative vote or written consent or any combination thereof, of Members representing sixty-seven percent (67%) of the total number of votes in the Association and the Owners of the Lots whose uses are changed and, if such amendment occurs during the Development Period, with the consent of Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause. Amendments to this Declaration shall be prepared and executed, by the President of the Association, certified as per the requirements of the Act by the Secretary or President of the Association and recorded in the Office of the Clerk and Recorder of Elbert County, Colorado.

(c) Consent of Declarant. During the Development Period, no amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant.

(d) Consent of Owner. Any amendment of this Declaration made in conformity with this Declaration and the Act shall be conclusively presumed to have received the consent of each Owner and Eligible Holder, if applicable, and no contrary provision in any Security Interest or contract between the Owner and a third party will affect the validity of such amendment.

(e) Effective Date; Change in Conditions. Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its recording or such



amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

14.2 Duration and Termination.

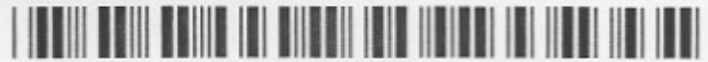
(a) Perpetual Duration. Unless terminated as provided in Section 14.2(b), this Declaration shall have perpetual duration. If Colorado law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein.

(b) Termination. This Declaration may not be terminated within thirty (30) years of the date of recording without the consent of all the Owners and, during the Declarant Control Period, the consent of Declarant. Thereafter, this Declaration may be terminated only by an instrument signed by Owners who represent at least sixty-seven percent (67%) of the total number of votes in the Association or such lesser percentage permitted by the Act as it may be amended from time to time. Any termination instrument shall be recorded in the Office of the Clerk and Recorder of Elbert County, Colorado and must comply with the termination procedures set forth in the Act. Nothing in this Section 14.2(b) shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.3 Alternative Dispute Resolution/Litigation. The Planned Community is subject to the Alternative Dispute Resolution provisions set forth in **Exhibit B** attached hereto. The Alternative Dispute Resolution provisions in **Exhibit B** limit an Owner's and the Association's ability to commence judicial or administrative proceedings. Every Owner upon acquisition of a Lot acknowledges and agrees to the Alternative Dispute Resolution provisions set forth in **Exhibit B** attached hereto. This Section 14.3 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of Assessments as provided in Article IX; (c) proceedings involving challenges to ad valorem taxation; and (d) counterclaims brought by the Association in proceedings instituted against it. This Section 14.3 may be amended only by a vote of Owners entitled to cast seventy-five percent (75%) of the votes in the Association and, if during the Declarant Control Period, with the written approval of Declarant.

14.4 Use of the Name "Wild Pointe Ranch." No Person shall use the name "Wild Pointe" or "Wild Pointe Ranch," any logo or marketing material or any derivative in any printed or promotional material without Declarant's prior written consent. Owners, however, may use the name "Wild Pointe" or "Wild Pointe Ranch" in printed or promotional matter where such term is used solely to specify that a particular property is located within Wild Pointe Ranch, and the Association shall be entitled to use the name "Wild Pointe Ranch" in its name.

14.5 Owner Enforcement. Except as necessary to prevent a violation or attempted violation that results or would result in direct and immediate physical damage to an Owner's Lot or the Improvements thereon and subject to the limitations set forth in Section 14.3 above and **Exhibit B** attached hereto, no Owner may prosecute any proceeding at law or in equity to enforce the provisions of this Declaration. Except as provided above with respect to threatened



immediate physical damage, the Association, acting through the Board, shall have the exclusive right, power and authority to enforce the provisions of this Declaration. In the event the preceding provisions of this Section 14.5 are adjudged to be unenforceable, an Owner may institute a proceeding to enforce a provision of this Declaration only if the Board does not, at its election, take action to enforce such provisions within sixty (60) days after the Owner gives written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration. Nothing in this Section 14.5 is intended or shall be construed to limit the Declarant's exercise or enjoyment of any rights reserved or granted to Declarant pursuant to this Declaration or the Act.

14.6 Severability. In the event any provision of this Declaration is deemed illegal or invalid by judgment or court order, a legally valid provision similar to the invalidated provision shall be substituted therefor. Invalidation of any provision of this Declaration, in whole or in part, or of any application of a provision of this Declaration, by judgment or court order shall in no way affect other provisions or applications of this Declaration.

14.7 Governing Law. This Declaration shall be governed by and construed under the laws of the State of Colorado.

14.8 Captions. The captions and headings on this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

14.9 Notices. Except for notices concerning meetings of the Association or the Board, which will be given in the manner provided in the Bylaws, any notices required or permitted hereunder or under the Bylaws to be given to any Owner, the Association, the Board or any Eligible Holder will be sent by certified mail, first-class postage prepaid, return receipt requested, to the intended recipient at, in the case of notices to an Owner, the address of such Owner at its Lot; in the case of notices to the Association or the Board, the address of the Association's registered agent; or in the case of notices to an Eligible Holder, the address thereof most recently given to the Association by notice from such Eligible Holder. All notices will be deemed given and received three (3) business days after such mailing. Any Owner or Eligible Holder may change its address for purposes of notice by notice to the Association in accordance with this Section 14.9. The Association or the Board may change its address for purposes of notice by notice to all Owners in accordance with this Section 14.9. Any such change of address will be effective five (5) days after giving of the required notice.

14.10 Colorado Common Interest Ownership Act. This Declaration shall be subject to all mandatory requirements of the Act, as amended. In the event of any conflict between any term or provision of this Declaration and any mandatory provision of the Act, the mandatory provisions of the Act shall control in all instances, and neither the Declarant nor the Association shall have any liability to any party for actions taken in conformity with Act, notwithstanding the fact that such actions may be contrary to the provisions of this Declaration. In the event of any conflict between any term of provision of this Declaration and any permissive or non-mandatory provision of the Act, the provisions of this Declaration shall control in all instances.



14.11 FHA/VA Approval.

(a) During Declarant Control. If and to the extent required by the Federal Housing Administration (the "FHA") and the United States Department of Veterans Affairs ("VA"), during the Declarant Control Period, the following actions will require the approval of the FHA and VA: (i) amendment of this Declaration; or (ii) termination of Wild Pointe Ranch as a planned community under the Act.

(b) Amendment Cooperation. If the FHA or VA, as a condition to approving any development project on the Property for loans insured or guaranteed by them, require the Owner proposing such development project to obtain an amendment to this Declaration for the purpose of making this Declaration comply with the statutory or regulatory requirements enforced by the FHA or VA, then Declarant and the other Owners agree to cooperate reasonably with such Owner in making such amendment; provided, however, that the proposed amendment must be consistent with the Act and the Owner requesting such amendment shall pay all costs and expenses (including, without limitation, attorneys fees) reasonably incurred by Declarant and the other Owners so cooperating.


14.12 Declarant Liability. Except as otherwise provided in the Act, no Person holding the status of, or exercising any rights or performing any obligations of, Declarant under this Declaration shall be liable to any Owner or Eligible Holder for any acts or omissions of another Person holding such status, or exercising any rights or performing any obligations associated with the status of Declarant.

14.13 No Merger. Notwithstanding that the Declarant currently holds title to all the Property, and notwithstanding that a subsequent Owner may own or hold title to more than one Lot, any such commonality of interests shall not result in or cause any merger and extinguishments, in whole or in part, of any provisions of this Declaration, it being intended by Declarant, for its benefit and the benefit of its successors in interest, that the terms of this Declaration not be merged by virtue of those common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and Recording of this Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of November 23, 2008.

DECLARANT:

WILD POINTE PARTNERS, INC.,
a Colorado corporation

By: , PRES.
P. David Pretzler, President



STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 23 day of November, 2004, 2005, by P. David Pretzler as President of WILD POINTE PARTNERS, INC., a Colorado corporation.

Witness my hand and official seal.

My Commission expires: 7-11-2006

Elizabeth Ann
Notary Public





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**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WILD POINTE RANCH**

**LEGAL DESCRIPTION OF THE REAL PROPERTY
SUBMITTED TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
WILD POINTE RANCH**

Lots 1-181, Wild Pointe,
according to the Wild Point Final Plat recorded on July 3, 2003 at Reception No. 436639,
Elbert County, Colorado



EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WILD POINTE RANCH

MANDATORY DISPUTE RESOLUTION

1. Statement of Clarification. Nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. The provisions of this **Exhibit B** are not intended to waive or alter the applicability of C.R.S. § 13-20-801 *et seq.*, to any action brought by Owners or by the Association, as the term "action" is defined by C.R.S. § 13-20-802.5(1). It is intended that Owners and the Association fully comply with all applicable provisions of both (1) **Exhibit B** and (2) C.R.S. § 13-20-801 *et seq.* It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Exhibit B are activated.

2. Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors; all Owners; design professionals; builders, including any of their subcontractors and suppliers; and any Person not otherwise subject to this Declaration but who agrees to submit to this Exhibit B (each of the foregoing entities being referred to as a "Party"), agree to encourage the amicable resolution of disputes involving the Planned Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Exhibit B and not to a court of law.

3. Claims. Except as specifically excluded in Section 4 of this **Exhibit B**, all claims, disputes and other controversies arising out of or relating to the:

(a) Agreement Contract for Sale and Purchase between Declarant and any Owner (except as may be expressly provided otherwise therein);

(b) Property (as defined in any such Agreement) or the Dwelling Unit;

(c) purchase of the Property or the Dwelling Unit;

(d) interpretation, application or enforcement of this Declaration;

(e) the soils of any property that lies within the Planned Community;

(f) land development, design, construction, and/or alteration of the Improvements within the Planned Community and/or any alleged defect therein;



- (g) any rights, obligations and duties of any Party under this Declaration;
- (h) any Limited Warranty Agreement between Declarant and any Owner and/or the Association; or
- (i) any breach of any of the foregoing;

all of which are hereinafter referred to as a "Claim," shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by Mandatory Binding Arbitration all in accordance with this Exhibit B and not in a court of law. Notwithstanding the foregoing, no Claim may be asserted or brought unless there is either (i) actual physical damage to or actual loss of use of tangible real or personal property or (ii) bodily injury or wrongful death.

4. Claims Subject to Approval. Unless Owners to whom at least seventy-five percent (75%) of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Exhibit B:

(a) any suit by the Association against any Party to enforce the provisions of ARTICLE IX (Financial Matters and Assessments);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of ARTICLE XI (Architectural Review Committee and Design Guidelines), or ARTICLE IV (Use Restrictions);

(c) any suit by an Owner to challenge the actions of Declarant, the Association, Declarant acting as the Architectural Review Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of ARTICLE XI (Architectural Review Committee and Design Guidelines); and

(d) any suit between or among Owners that does not include Declarant or the Association.

5. Notice of Claim. Any Party alleging a Claim ("Claimant") against any other Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

(a) the nature of the Claim, including a list of any alleged construction defects, the Persons involved and Respondent's role in the Claim;

(b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the date on which the Claim first arose;



(d) the name and address of every Person, including without limitation any current or former employees of Respondent, whom Claimant believes does or may have information relating to the Claim; and

(e) the specific relief and/or proposed remedy sought.

6. Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in any event, regardless of the nature of the Claim, within the time specified in the applicable Limited Warranty Agreement described in Section 3(h) of this **Exhibit B** above for warranty Claims and no later than two (2) years after the Claim arises for all other Claims.

7. Right to be Heard. Upon receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any mediation or arbitration Respondent shall have the right to make a written response and be heard by Claimant, affected Owners, and Association in an effort to resolve the Claim.

8. Right to Inspect and Repair. If the Claim is based on the land development, design, construction and/or alteration of any Improvements within the Planned Community then, upon reasonable notice to any affected Owners (or the Association if the affected area is owned by the Association), Respondent shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including but not be limited to, any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the Party causing the inspection to be made ("Inspecting Party") shall:

(a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Affected Property");

(b) minimize any disruption or inconvenience to any person who occupies the Affected Property;

(c) remove daily all debris caused by the inspection and located on the Affected Property; and

(d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from the Affected Property and repair and replace all damage, and restore the Affected Property to the condition of the Affected Property as of the date of the inspection, unless the Affected Property is to be immediately repaired.

The repair, replacement, and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Affected Property that were damaged, removed, or destroyed by Inspecting Party.

In the event the Inspecting Party wishes to make repairs to resolve the subject matter of the Claim, the Inspecting party shall have the right, at its option, to do so and to enter the Affected Property at a reasonable time(s) and upon reasonable notice for such purpose.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect and/or repair to accrue against or attach to the Affected Property. The Inspecting Party shall indemnify, defend and hold harmless the Affected Owners, or the Association if the Affected Property is owned by the Association, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorneys' fees, resulting from any breach of this Article by the Inspecting Party.

9. Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may be represented by attorneys and independent consultants (at such Party's cost) to assist such party in negotiations and to attend meetings.

10. Mediation:

(a) If the Parties do not resolve the Claim through negotiations within thirty (30) days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties, Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent mediation service reasonably acceptable to all Parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and all Respondent(s) shall be released and discharged from any and all liability to Claimant on account of such Claim.

(b) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.

(c) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, 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 mediation was terminated.

(d) Within ten (10) days after issuance of a Termination of Mediation, Claimant shall make a final written Settlement Demand to the Respondent(s), and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fail to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(e) Each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(f) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Exhibit B and any Party thereafter fails to abide by the terms of such agreement, then any other affected Party may file suit to enforce such agreement without the need to again comply with the procedures set forth in this Exhibit B. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, reasonable attorneys' fees and court costs.

11. Arbitration:

(a) If the Parties do not reach a settlement of the Claim within fifteen (15) days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have fifteen (15) additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures set forth below in Section 18 of this **Exhibit B** and deliver an Arbitration Notice to all Respondent(s).

(b) The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties including any third Parties agree that the third Parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the Parties to resolve all rights and obligations of all interested Parties at one time in one forum rather than in multiple proceedings.

(c) Within sixty (60) days after submission of the Claim, Claimant shall file with the arbitrator and deliver to Respondent(s) a certified list of construction defects that are the subject of the Claim, which list shall be signed by the attorney for Claimant, or if Claimant does not have an attorney, by Claimant, and shall include:

- (i) a statement that (a) the attorney for Claimant, or Claimant if Claimant does not have an attorney, has consulted with a Person not a Party to the Claim with expertise in the area of each construction defect that is the subject of the Claim (the "Construction Consultant") and (b) the Construction Consultant has inspected the improvements for which the construction defects are claimed, has reviewed the known facts, including such records, documents and other materials the Construction Consultant has found to be relevant to the construction defects, and has concluded that the Claim has substantial justification based on the Construction Consultant's inspection and review of the known facts;
- (ii) a certification that the Construction Consultant can demonstrate by competent evidence that, as a result of training, education, knowledge and



experience, the Construction Consultant is competent to testify as an expert and render an opinion as to the alleged construction defects;

- (iii) a certification signed by the Construction Consultant stating (a) such Person's name, address, qualifications and credentials that render him or her competent to express an expert opinion as to the alleged construction defect, (b) that he or she has inspected each improvement and reviewed the known facts, including such records, documents and other materials which he or she has found to be relevant to the construction defects at issue, and (c) as to each improvement for which a construction defect Claim is asserted, an identification of the owner of the improvement, the location and date of construction of the improvement, and an identification of each claimed construction defect and its specific location;
- (iv) a computation of the damages alleged for each construction defect;
- (v) an identification, with respect to each improvement and construction defect, of each Party alleged to be responsible for such defect;
- (vi) a certification that each Party alleged to be responsible for the alleged construction defect has been given written notice of the defect and an opportunity to remedy the defect under the foregoing provisions of this Article and that the defect has not been remedied; and
- (vii) a copy of the notice of Claim served by Claimant on each Person that is named as a Party to the Claim.

(d) If the Claim is not timely submitted to arbitration, if Claimant fails to appear for the arbitration proceeding, or if Claimant fails to file and deliver the certified list of construction defects as provided in subparagraph (c) above, the Claim shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.

(e) The award rendered by the Arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in accordance with applicable law and judgment obtained thereon, and execution may issue. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorneys' fees.

(f) Claimant shall notify Respondent(s) prior to retaining any Person or entity as an expert witness for purposes of any arbitration or authorized litigation.

12. Consensus for Association Action. Except as provided for in Section 4 of this **Exhibit B**, the Association shall not commence any action, mediation or arbitration against Declarant or other Party for a Claim unless the Owners to which at least seventy-five percent (75%) of the votes in the Association are allocated agree to such proceedings. However, such Owner consent

must be obtained by the Association only after the Board of Directors delivers written notice to all Members of the Association in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. Such delivery shall include:

- (a) a description of the nature of the Claim and the relief sought;
- (b) a copy of any written response thereto, including any settlement proposal;
- (c) a statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association proposes to assert;
- (d) a statement that any recovery from the action may not result in receipt of funds to pay all costs of remedying the Claim as estimated by experts retained by the Association;
- (e) an estimate of the expenses and fees to the Association that the Board anticipates will be incurred in prosecuting the claim; and
- (f) a description of the agreement with the attorneys whom the Board of Directors proposes to retain to prosecute the cause of action.

13. Liability for Failure to Maintain an Action Against Declarant. No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was acting in good faith; and (c) the act or omission was not willful, wanton, or grossly negligent.

14. Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the Claim or otherwise for purposes of remedying the Claim.

15. Exclusive Remedy. The provisions contained in this **Exhibit B** shall be the sole and exclusive remedy that the Association and other Parties shall have against Declarant for any Claim, and Declarant, the Association and each Owner expressly waives any right it may have to seek resolution of any Claim contemplated by this **Exhibit B** in any court of law or equity and any right to trial by jury.

Should any Party commence litigation or any other action against any other Party, in violation of the terms of this **Exhibit B**, such Party shall reimburse the costs and expenses, including attorneys' fees, incurred by the other Party seeking dismissal of such litigation or action. If Claim involves Declarant or the Association, no Party shall record a memorandum or notice of *lis pendens* or similar instrument that would encumber or create a lien on real property



owned by either Declarant or the Association, and any recording of the same shall be null and void and of no force or effect.

16. Binding Effect. This Exhibit B and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the County to the fullest extent permitted under the laws of the State of Colorado.

17. Amendment. This Exhibit B may not be amended unless the amendment is approved by a majority of the Board of Directors and Owners to whom at least seventy-five percent (75%) of the votes in the Association are allocated. Any amendment made without the requisite Board and Owners' vote shall be null and void and shall have no effect.

18. Arbitration Procedures.

a. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the parties.

b. If the parties are unable to agree upon an Arbitrator within thirty (30) days from the date of the Arbitration Notice, the presiding judge of the Elbert County District Court in which the Planned Community is located shall appoint a qualified arbitrator upon application of a party.

c. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to 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 any Party 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.

d. The Arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Planned Community is located unless otherwise agreed by the Parties.

e. Except as modified herein or unless otherwise agreed to by all the parties to the arbitration proceeding, the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.

f. No formal discovery shall be conducted in the absence of an order of the Arbitrator or express written agreement among all the Parties.

g. Unless directed by the Arbitrator, there will be no post-hearing briefs.



h. The Arbitration Award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing and shall be signed by the Arbitrator.

i. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorneys' fees.



**EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WILD POINTE RANCH**

EASEMENTS AND OTHER MATTERS OF RECORD

1. Easements shown on the recorded Plat.
2. Easements described in this Declaration.
3. Patent recorded January 17, 1903 in Book 23 at Page 456.
4. Patent recorded November 13, 1874 in Book 1 at Page 285.
5. Patent recorded August 26, 1891 in Book 14 at Page 97.
6. Patent recorded December 23, 1891 in Book 14 at Page 126.
7. Patent recorded December 21, 1891 in Book 14 at Page 125.
8. Patent recorded March 4, 1907 in Book 14 at Page 530.
9. Patent recorded July 20, 1910 in Book 14 at Page 607.
10. Patent recorded July 20, 1910 in Book 14 at Page 608.
11. Deed recorded February 28, 1958 in Book 205 at Page 125.
12. Easement recorded March 25, 1970 in Book 271 at Page 451.
13. Right of Way for and any change in the location of Gold Creek.
14. Agreement recorded November 15, 2000 in Book 608 at Page 118 and Rerecorded May 30, 2001 in Book 614 at Page 667.
15. Easement recorded July 1, 2002 in Book 631 at Page 192.
16. Service Plan recorded October 8, 2002 in Book 634 at Page 815.
17. Service Plan recorded October 8, 2002 in Book 634 at Page 816.
18. Instrument recorded December 5, 2002 in Book 637 at Page 328.



19. Resolution 03-01 recorded January 21, 2003 in Book 639 at Page 110.
20. Resolution 03-02 recorded January 21, 2003 in Book 639 at Page 111.
21. Agreement recorded March 13, 2003 in Book 641 at Page 707.
22. Instrument recorded December 5, 2002 in Book 637 at Page 330.
23. Easement recorded April 27, 2004 at Reception No. 448760.



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**MORTGAGEE'S RATIFICATION
OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WILD POINTE RANCH**

The undersigned Mortgagee COMMUNITY FIRST NATIONAL BANK ("MORTGAGEE"), hereby consents to the recording of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WILD POINTE RANCH, recorded _____, 200__, as Reception No. _____, with the Office of the Clerk and Recorder of Elbert County, Colorado. MORTGAGEE hereby joins in the dedication made therein to the extent of its interest.

PROPERTY: Lots 1-181, Wild Pointe, according to the Wild Point Final Plat recorded on July 3, 2003 at Reception No. 436639, Elbert County, Colorado

EXECUTED this 23rd day of November, 2004.

MORTGAGEE:
COMMUNITY FIRST NATIONAL BANK

By: [Signature]
Les Sowitch, Senior Vice President

STATE OF COLORADO)

COUNTY OF Jefferson)

) ss.
)

The foregoing Mortgagee's Ratification was acknowledged before me this 23rd day of November, 2004, by Les Sowitch as Senior Vice President of Community First National Bank.

My commission expires: April 30, 2008.

WITNESS my hand and official seal.

[Signature]
Notary Public

