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COMMUNITY CHARTER
FOR THE BROWN RANCH



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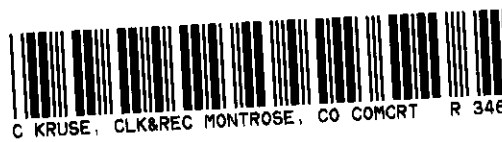
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COMMUNITY CHARTER
FOR
THE BROWN RANCH

THIS COMMUNITY CHARTER FOR THE BROWN RANCH is made as of _____, 2003 by SUNSHINE OF MONTROSE, INC., a Colorado corporation (together with its successors and assigns as herein provided, "Declarant").

RECITALS

A. Declarant owns the real property located in the County of Montrose, State of Colorado, that is more particularly described on Exhibit A attached hereto and made a part hereof (together with any other real property later made subject to this Community Charter as provided herein, the "Property").

B. Declarant desires to create a master planned community on the Property known as the "Brown Ranch." In that regard, Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Community Charter, which shall run with the Property.

C. Declarant owns or may acquire additional real property located in the County of Montrose, State of Colorado, that is more particularly described on Exhibit B attached hereto and made a part hereof (the "Expansion Property"). The Expansion Property is adjacent to or in the vicinity of the Property. Pursuant to this Community Charter, Declarant reserves the right, but has no obligation, to add all or any part of the Expansion Property, at any time and from time to time, to the master planned community created by this Community Charter.

DECLARATION

ARTICLE 1
DECLARATION

Declarant hereby declares that the Property (including all real property later made subject to the terms of this Community Charter as provided herein, as of the date such property becomes so subject) shall be owned, held, used, occupied, maintained, altered, transferred, leased, encumbered, sold and conveyed subject to the covenants, conditions, restrictions, equitable servitudes, reservations, easements, assessments, charges, liens and other provisions set forth in this Community Charter, which shall run with the Property and shall bind and inure to the benefit of all parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

ARTICLE 2
DEFINITIONS

2.1 Basic Definitions. The following words and phrases when used in this Community Charter shall have the meaning hereinafter specified.



(a) “Act” means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

(b) “Agency” means, as the context requires, any one or more of the Federal National Mortgage Association formed pursuant to Title VIII of the Housing and Urban Development Act of 1968, the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, the Department of Housing and Urban Development (including the Federal Housing Administration and the Government National Mortgage Association), the Veterans Administration or any other governmental or quasi-governmental agency or other public, quasi-public or private entity that performs, now or in the future, functions similar to those now performed by the foregoing entities in relation to the lending, insuring or guaranteeing of mortgage funds or the purchase of mortgages relating to residential real estate.

(c) “Applicant” has the meaning given to that term in Section 9.5(a) below.

(d) “Area of Common Responsibility” means the Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Community Charter, any Charter Supplement or other applicable covenant, contract or agreement.

(e) “Articles” means the Articles of Incorporation of the Association, as the same may be amended and supplemented from time to time.

(f) “Assessment” means a General Assessment, a Service Area Assessment, a Special Assessment, or a Specific Assessment levied pursuant to Article 7 below.

(g) “Assessment Lien” means the lien of the Association described in Section 7.8 below.

(h) “Association” means the Brown Ranch Community Association, a Colorado nonprofit corporation, and its successors and assigns.

(i) “Association Documents” means this Community Charter, the Articles, the Bylaws, the Rules and Regulations, and the Design Guidelines, as the same may be amended and supplemented from time to time.

(j) “Board of Directors” means the board of directors of the Association.

(k) “Brown Ranch” means the planned community on the Property.

(l) “Bylaws” means the Bylaws of the Association, as the same may be amended and supplemented from time to time.

(m) “Charter Supplement” means a recorded supplement to this Community Charter, which may submit additional property to this Community Charter, create easements over the property described in the Charter Supplement, impose additional obligations or restrictions on

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such property, designate Service Areas or change the boundaries of Service Areas, as provided in Section 3.3, withdraw property from this Community Charter, or any of the foregoing.

(n) “Common Areas” means any real property within the Property (including real property later made subject to the terms of this Community Charter as provided herein, as of the date such property becomes so subject), other than a Lot (as hereafter defined), and all personal property that is now or hereafter owned or leased by the Association, or that the Association is otherwise required to operate, manage, maintain or repair from time to time, together with any improvements now or hereafter located thereon. The Common Areas are intended for the common use and enjoyment of the Owners and include, without limitation, trails, recreational amenities, easements and landscape buffers designated on any final development plan or subdivision plat for any portion of the Property or Brown Ranch, or constructed on the Property, excluding (i) those dedicated to any governmental or quasi-governmental authority for public use (provided that landscaping within dedicated rights-of-way shall be deemed Common Areas to be maintained by the Association), (ii) those to be maintained and operated by any special district, and (iii) those now or hereafter owned, leased, operated, managed, maintained or repaired by any property owners’ association other than the Association, and which only members of such other property owners’ association are entitled to use and enjoy (including without limitation, any recreational facility hereafter constructed for the benefit of less than all of the Brown Ranch, if a separate association is formed to govern the operations and maintenance of such facility).

(o) “Common Expenses” means (i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, maintaining, repairing, altering and improving the Common Areas (including, without limitation, costs for taxes and insurance); (B) administering and enforcing the covenants, conditions, restrictions, reservations, easements and other provisions set forth in this Community Charter; (C) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant to this Community Charter; (D) regulating and managing the planned community created pursuant to this Community Charter; and (E) operating the Association; and (ii) reserves for any such costs, expenses and liabilities, including, without limitation, reserves for repair and replacement of capital items.

(p) “Community Charter” means this Community Charter for the Brown Ranch, as it may be amended or supplemented from time to time.

(q) “Covenant to Share Costs” has the meaning given to that term in Section 8.6 below.

(r) “Declarant” means Sunshine of Montrose, Inc., a Colorado corporation, together with its successors and assigns as provided herein and in the Act. A Person shall be deemed a “successor or assign” of Declarant only if such Person is designated as such in an instrument signed by Declarant and such Person and recorded in the real property records of Montrose County, Colorado, which instrument may limit by designation the particular rights or interest of Declarant to which such Person succeeds. Notwithstanding the foregoing, a successor entity formed by merger or consolidation of Declarant shall automatically be deemed a successor and assign of Declarant for all purposes and as to all rights of Declarant set forth in this Community Charter.



- (s) "Design Guidelines" has the meaning given to that term in Section 9.1 below.
- (t) "Design Review Board" means the committee or committees established by the Board of Directors after the Development and Sale Period (as hereafter defined) to regulate the design and construction of improvements on Lots pursuant to Article 9 below.
- (u) "Design Reviewer" means the person, persons, entity or entities appointed or designated to review an application for an Improvement pursuant to Article 9 below.
- (v) "Development and Sale Period" means the period commencing on the date on which Declarant forms the Association and ending on the day when the last Dwelling Unit has been sold to a Homebuyer.
- (w) "Director" means a duly elected or appointed member of the Board of Directors.
- (x) "Dwelling Unit" means a physical portion of the Brown Ranch that is designated for separate ownership or occupancy for residential purposes and the boundaries of which are described in or determined from this Community Charter.
- (y) "Expansion Property" has the meaning given to that term in Recital C above.
- (z) "First Mortgage" means any Mortgage which is not subordinate to any other Mortgage on the subject real property. The holder of a First Mortgage is herein called a "First Mortgagee."
- (aa) "General Assessment" means an Assessment for Common Expenses levied pursuant to Section 7.4 below.
- (bb) "General Common Area" means all Common Areas, except Limited Common Areas. The General Common Areas include, without limitation, those Common Areas identified on Exhibit C attached hereto and made a part hereof or identified on any Charter Supplement.
- (cc) "Homebuyer" means a purchaser of a completed Dwelling Unit.
- (dd) "Improvement" means any landscaping, improvement, structure or appurtenance of every type and kind, including, without limitation, grading, excavation and filling or similar disturbance to the surface of the land; landscaping features; clearing or removal of trees, shrubs, grass or plant; satellite dish; antenna; dwelling units; buildings; outbuildings; swimming pools, tennis courts, basketball hoops, skateboard ramps and other recreational improvements; patios and patio covers; decks; awnings; exterior paint, trim and other finish materials; solar collectors; dog runs; dog houses; walkways; trails; additions to existing structures; alteration to exterior surfaces of approved buildings, structures, landscaping, or grading (including without limitation, any change of exterior appearance, color, roofing materials or texture); alteration of the drainage pattern with respect to any Lot or onto any other Lot or Common Area; sprinkler systems; garages and carports; driveways; paving and gravel; fences; walls (whether for screening or retention); stairs; exterior lighting; signs; exterior tanks and utilities (whether for air conditioning, cooling, heating, water softening or any other purpose); or any change to, or



demolition or destruction (by voluntary action) of, any of the foregoing, or any other exterior change visible from any location outside the Lot.

(ee) "Limited Common Area" means any Common Area that is reserved for the exclusive use by or benefit of one or more, but less than all of the Owners, including, without limitation, all Common Areas designated as Limited Common Areas by the Act, this Community Charter, or the subdivision plat for any portion of the Property (including real property later made subject to the terms of this Community Charter as provided herein, as of the date such property becomes so subject). The Declarant may designate that any amenity or facility (including but not limited to any recreational facility) hereafter constructed as part of the Brown Ranch is a Limited Common Area of only certain Lots. NO OWNER SHOULD ASSUME BY REASON OF THE PROXIMITY OF SUCH OWNER'S LOT TO ANY AMENITY OR FACILITY THAT SUCH OWNER WILL HAVE RIGHTS TO USE AND ENJOY SUCH AMENITY OR FACILITY, AND EACH PURCHASER SHOULD CAREFULLY INVESTIGATE WHAT COMMON AREAS AND LIMITED COMMON AREAS MAY BE USED AND ENJOYED AS A RESULT OF OWNING A PARTICULAR LOT.

(ff) "Lot" means (i) any area of the Property (including all real property later made subject to the terms of this Community Charter as provided herein, as of the date such property becomes so subject) designated as a lot on any subdivision plat now or hereafter recorded in the real property records of Montrose County, Colorado, with respect to such property, and (ii) any area of real property within the Property or the Expansion Property that Declarant later designates as a Lot pursuant to Section 15.2 below. As used in this Community Charter, a "Lot" is intended to be a "unit," as that term is used in the Act. If any Lot or Tract is further subdivided in a manner permitted by this Community Charter, then upon such further subdivision, the term "Lot" shall mean each subdivided unit within such Lot or Tract that may be legally conveyed and is separately taxed and assessed as a distinct unit of real estate.

(gg) "Member" means a member of the Association.

(hh) "Membership" means a membership in the Association and the rights granted to Owners pursuant to this Community Charter, the Articles and the Bylaws to participate in the Association.

(ii) "Mortgage" means any interest in real property created by contract or conveyance as security for payment of a debt or performance of an obligation. The term includes, without limitation, a lien created by mortgage, deed of trust, trust deed, security deed, contract for deed, lease intended as security, and assignment of leases and rents intended as security, as well as an executory land sales contract to which the Veterans Administration of the United States of America is party as seller, regardless of whether such instrument is insured, held or guaranteed by any Agency. The holder or beneficiary of a Mortgage is herein called a "Mortgagee."

(jj) "Notice and Opportunity to be Heard" means prior written notice and an open hearing before the Board of Directors, or a committee appointed by the Board of Directors as provided in the Bylaws (regardless of whether such hearing is actually attended by the Owner).



(kk) "Owner" means the record holder of legal title to the fee simple interest in any Lot or portion thereof (including, without limitation, Declarant and any Participating Builder). If there is more than one record holder of legal title to a Lot, each record holder shall be an Owner.

(ll) "Participating Builder" means any Person who now or hereafter acquires a Lot for the purpose of constructing a dwelling thereon for resale to a third party, and who is designated in a written instrument signed by Declarant as an "Participating Builder" under this Community Charter. Only Declarant may designate a Participating Builder. Such designation may be stated in the executed contract governing the acquisition of such Lot from Declarant, and is subject to revocation by Declarant as provided in Section 10.25 below.

(mm) "Person" means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity or combination thereof.

(nn) "Purchaser" means a Person, excluding Declarant and all Participating Builders, who by means of a transfer acquires a legal or equitable interest in a Lot, other than (a) a leasehold interest of less than forty years, including renewal options, or (b) a Mortgage.

(oo) "Property" has the meaning given to that term in Recital A above.

(pp) "Real Estate Transfer Fee" has the meaning given to that term in Section 7.7 below.

(qq) "Recordation" means the filing for record of any document in the office of the Clerk and Recorder of Montrose County, Colorado

(rr) "Rules and Regulations" means any instruments adopted by the Association for the regulation and management of the planned community created by this Community Charter, as the same may be amended or supplemented from time to time.

(ss) "Service Areas" means an area or areas within the Property (whether or not contiguous), in which the Lots share Limited Common Areas and/or receive special benefits or services from the Association that it does not provide to all Lots within the Brown Ranch. For example, and by way of illustration and not limitation, all detached housing developments may constitute a separate Service Area. Service Areas may or may not be governed by a Subassociation.

(tt) "Service Area Assessment" has the meaning given to that term in Section 7.3(d) below.

(uu) "Service Area Expenses" means all expenses that the Association incurs or expects to incur in connection with the ownership, maintenance and operation of Limited Common Areas, or in providing benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area. Service Area Expenses may include a reasonable administrative charge in such amount as the Board of Directors deems appropriate, provided that any such administrative charge is applied uniformly among all Service Areas receiving the same service.

(vv) "Specific Assessment" has the meaning given to that term in Section 7.6 below.

(ww) "Share of Common Expenses" means the share of Common Expenses allocated to each Lot in accordance with the terms and conditions of Section 7.2 below.

(xx) "Special Assessment" has the meaning given to that term in Section 7.5 below.

(yy) "Special Declarant Rights" means the rights reserved by Declarant for itself, its successors and assigns in this Community Charter, including without limitation, Article 15 below.

(zz) "Subassociation" means a Colorado corporation or limited liability company, other than the Association, hereafter organized and established and whose members are Owners of Lots within all or a portion of the Property covered by this Community Charter from time to time.

(aaa) "Tract" means any area of the Property (including all real property later made subject to the terms of this Community Charter as provided herein, as of the date such property becomes so subject) that is not a Lot.

2.2 Gender and Number.

Wherever the context of this Community Charter so requires, (a) words used in the masculine gender shall include the feminine and neuter genders; (b) words used in the neuter gender shall include the masculine and feminine genders; (c) words used in the singular shall include the plural; and (d) words used in the plural shall include the singular.

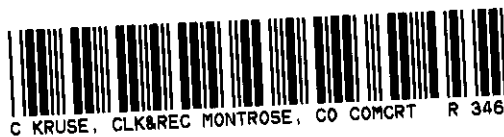
ARTICLE 3 COMMUNITY STRUCTURE

3.1 Lots.

(a) Lots. Declarant has caused the Property to be platted as 39 Lots, the boundaries and identifying numbers of which are shown on the subdivision plat for the Property now or hereafter recorded in the real property records of Montrose County, Colorado.

(b) Right to Create Additional Lots. Declarant hereby reserves the right to create a maximum of 1,800 Lots within the planned community created by this Community Charter, including the Expansion Property.

3.2 Tracts. Declarant reserves the right to create Tracts, from time to time, within the planned community created by this Community Charter. The boundaries and designations of such tracts shall be shown on the subdivision plat(s) for the Property now or hereafter recorded in the real property records of Montrose County, Colorado. Such tracts are not Lots. Declarant shall the right to convey, lease or otherwise grant easements or rights to the Association or governmental authorities over the Tracts to the extent that Common Areas are or will be constructed thereon.



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3.3 Service Areas.

(a) Lots may also be part of one or more Service Areas in which the Lots share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Lots within the Brown Ranch. A Lot may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Lots of more than one housing type and may include Lots that are not contiguous.

(b) The Declarant may initially designate Service Areas (by name or other identifying designation) and assign Lots to a particular Service Area either in Exhibit A or in a Charter Supplement. During the Development and Sale Period, the Declarant may unilaterally amend this Community Charter or any Charter Supplement to expand, decrease or otherwise change Service Area boundaries and may record one or more Charter Supplements to create new Service Areas. In addition, the Board of Directors may, by resolution or Charter Supplement: (i) designate Service Areas and assign Lots to them upon petition of Owners of at least 67% of the Lots affected by the proposed designation; and (ii) expand Service Area boundaries upon petition of Owners of at least 67% of the Lots within the affected Service Area and Owners of at least 67% of the Lots that would be added to the Service Area; and (iii) decrease or otherwise change (but not expand) Service Area boundaries upon petition of Owners of at least 67% of the Lots within the affected Service Area.

(c) Owners of Lots within each Service Area may be permitted or required by the Association to elect a "Service Area Committee" in accordance with the Bylaws to represent and act on behalf of Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Association Documents shall also refer to such Service Area Committees, if appropriate from the context.

3.4 Separate Taxation; No Partition.

(a) Separate Taxation. Pursuant to Section 38-33.3-105 of the Act, each Lot and each Tract within Brown Ranch constitutes a separate parcel of real estate and will be separately assessed and taxed.

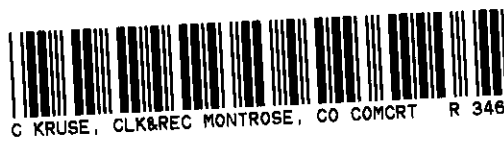
(b) No Right to Partition. No Owner shall have the right to partition or to seek the partition of the Common Areas or any portion of the Common Areas.

ARTICLE 4 THE ASSOCIATION

4.1 Formation of the Association. On or before the date on which Declarant conveys the first Lot to a Purchaser, Declarant shall cause the Association to be formed.

4.2 Purposes and Powers.

(a) The Association's purposes are to: (i) manage, operate, construct, improve, alter and maintain the Area of Common Responsibility, as to which the Association may retain a manager; (ii) to administer and enforce the covenants, conditions, restrictions, reservations,

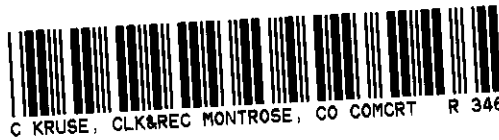


easements and other provisions set forth in this Community Charter; (iii) to levy, collect and enforce the Assessments, charges and liens imposed pursuant to this Community Charter; (iv) to the extent determined by the Board of Directors, to provide services and recreational and social facilities and activities for Owners and residents of the Brown Ranch and their guests (including but not limited to mandatory trash collection services), and to provide services to Subassociations and Service Areas pursuant to written agreements upon terms and conditions acceptable to the Board of Directors; (v) to regulate and manage the operation of the Brown Ranch, including without limitation, the adoption of Rules and Regulations from time to time, (vi) to enter into agreements with governmental authorities, including, without limitation, special districts, with respect to any of the Association's responsibilities or to obtain services and recreational and social facilities and activities for Owners and residents of the Brown Ranch and their guests, upon terms and conditions acceptable to the Board of Directors; and (vii) to the extent determined by the Board of Directors, to otherwise act to further the common interests, health, safety or welfare of the Owners.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may (i) take any and all actions that it deems necessary or advisable to fulfill its purposes, and (ii) exercise all powers that may be exercised in Colorado by nonprofit corporations. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management or functions for which the Association is responsible under this Community Charter or any other Association Document, and shall have the authority to award exclusive contracts to providers of services such as trash collection. Notwithstanding any provision of this Community Charter to the contrary, the Association is not empowered to institute or conduct any legal action that fails to comply with the requirements and limitations stated in the Articles.

4.3 Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees, with Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits A or B, easements, personal property, utility lines, and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members. At Declarant's option, any such conveyance or transfer may be subject to reserved rights as well as covenants, conditions, restrictions, liens, encumbrances and equitable servitudes existing or created at the time of such conveyance or transfer, so long as such conveyance or transfer is free from monetary liens (other than liens for taxes and assessments not then due and payable). Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Property originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.4 Governmental Interests. During the Development and Sale Period, Declarant may designate sites within the Property for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to



permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.5 Dedication of Common Area. The Association may dedicate portions of the Common Area to the City of Montrose, Colorado or to any other local, state, or federal governmental or quasi-governmental entity.

4.6 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, Declarant, nor any Person succeeding to any rights of Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or other measures, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant and any Person succeeding to any rights of Declarant are not insurers and that each Person using the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lot, resulting from acts of third parties.

4.7 Relationship With Tax-Exempt Organizations. Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations, including, without limitation, metropolitan districts and other special districts, for the benefit of the Property. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.8 Powers of the Association Relating to Subassociations. After Notice and Opportunity to be Heard, the Association may veto any action taken or contemplated by any Subassociation which the Board of Directors reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with Association Documents. The Association also may require specific action to be taken by any Subassociation to fulfill its obligations and responsibilities under any Association Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Subassociation. If the Subassociation fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may, after Notice and Opportunity to be Heard, effect such action on behalf of the Subassociation and assess the Lots within the jurisdiction of such Subassociation for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment. Notwithstanding the foregoing or any other provision of the Association Documents, no Subassociation may impose, assess or collect any assessment, fee or other charge upon, on account of or as a result of any transfer of real

estate, except only that a Subassociation may charge a nominal fee for revising its records to reflect such transfer and the name of the transferee.

4.9 Trails. Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Property, excluding Dwelling Units, but including the Common Areas, to be used as recreational bike and pedestrian pathways and trails ("trail system"). Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of such Owner's Lot, that the Property may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots adjacent to such trail system resulting from the use of the trail system by Declarant, the Association, its Members, their families, tenants and guests, and the public.

4.10 Association Documents.

(a) The obligations, burdens and benefits created by this Community Charter touch and concern the Property (including real property later made subject to this Community Charter as provided herein, as of the date such property is so made subject) and are, and shall be, covenants running with the Property for the benefit of all of such Property. The Association and each Owner shall comply with and benefit from each term, provision, covenant, condition, restriction, reservation, easement and other provision contained in the Association Documents.

(b) If there is any conflict or inconsistency between the terms and conditions of this Community Charter and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Community Charter shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. In the event of any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control. If there is any conflict or inconsistency between the terms and conditions of any Association Document and the mandatory provisions of the Act or other applicable law, the Act or such applicable law, as the case may be, shall control.

4.11 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Articles and Bylaws. Subject to the provisions of Section 6.2, the Board of Directors shall be elected by Voting Delegates representing Election Districts within the Property, and Voting Delegates shall be appointed or elected as provided in Section 4.13.

4.12 Establishment of Election Districts. The Property shall be divided into Election Districts, as hereinafter described, and each Election District shall have one Voting Delegate and one alternate Voting Delegate to the Association to exercise the voting power of all the Members in such Election District. If a Subassociation is created by the Recordation of a Charter Supplement, then the Election District(s) for the Property within the jurisdiction of the Subassociation shall be established by Declarant by the Recordation of one or more Charter Supplements. In the event that there shall not be created a Subassociation for any portion of the Property, then the Election District(s) for such portion of the Property shall be established by Declarant by the Recordation of one or more Charter Supplements or other written instruments

signed by Declarant. Such Charter Supplement or other written instruments shall contain legal descriptions of the portions of the Property which shall be or become part of an Election District and a statement that such real property described therein shall be or become part of a designated Election District for purposes of this Community Charter.

4.13 Appointment or Election of Delegates. With respect to each Election District which is subject to the jurisdiction of a Subassociation, the Executive Board of the Subassociation shall appoint a Voting Delegate for such Election District and an alternate Voting Delegate to act when the Voting Delegate is unable to attend meetings of the Association. The Voting Delegate and alternate Voting Delegate from each such Election District shall be appointed on an annual basis. With respect to each Election District that is not subject to the jurisdiction of a Subassociation, a Voting Delegate and alternate Voting Delegate from such Election District shall be elected on an annual basis, either by written ballot or at a meeting of the Members within such Election District, as the Board of Directors determines; provided, however, upon written petition signed by Members holding at least 10% of the votes attributable to Lots within the Election District, the election for such Election District shall be held at a meeting. If a meeting will be held for an election of a Voting Delegate and alternate Voting Delegate, notice of such meeting shall be provided to all Owners within the Election District in the same manner as provided in the Bylaws. The presence, in person or by proxy, of Members representing at least 30% of the total votes attributable to Lots in the Election District shall constitute a quorum at any Election District meeting. No Person shall be eligible to serve as a Voting Delegate or an alternate Voting Delegate unless such Person is an Owner or, with respect to any Lot that is owned by an entity, an officer, director, partner, member, manager or employee of such entity; provided, however, no Person shall be eligible to serve as a Voting Delegate or alternate Voting Delegate if any Assessment for such Person's Lot (or such Owner's Lot, with respect to any Lot that is owned by an entity) is delinquent. The Voting Delegate shall be responsible for casting all votes attributable to Lots owned by Members in the Election District on all Association matters requiring a membership vote, except as otherwise specified in this Community Charter or the Bylaws.

4.14 Books and Records. Upon request, the Association shall allow Owners, Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

4.15 Personal Liability and Indemnification.

(a) No Director or officer of the Association appointed by Declarant shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such Director or officer, unless a court of competent jurisdiction finds that such Director or officer breached a fiduciary duty that such Director or officer owed to the Association or an Owner.

(b) No Director or officer of the Association who was not appointed by Declarant, and no employee, agent or committee member of the Association or Design Review Board shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or



expense suffered or incurred by reason of any act or omission of such Director, officer, employee, agent or committee member, unless a court of competent jurisdiction finds that the act or omission of such Director, officer, employee, agent or committee member was wanton and willful.

(c) The Association shall indemnify and hold harmless each present or former Director or officer, employee, agent or committee member against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and disbursements, asserted against or incurred by any such present or former Director or officer, employee, agent or committee member to the fullest extent permitted by the Association Documents and applicable law. The Association shall obtain director and officer liability insurance as required by the Bylaws, and the cost of such insurance shall constitute a Common Expense.

ARTICLE 5 MEMBERSHIP IN THE ASSOCIATION

5.1 Membership.

(a) Every Owner shall be a Member of the Association. There shall be one Membership appurtenant to every Lot. A Membership may not be separated from the ownership of the Lot to which it is appurtenant.

(b) Any Membership appurtenant to a Lot having more than one Owner shall be shared by such Owners. All such Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association.

(c) A Membership may be transferred or encumbered only in connection with the conveyance or encumbrance of a fee simple interest in the Lot to which the Membership is appurtenant. Any transfer or encumbrance of a Membership other than as permitted in this paragraph 5.1(c) shall be void and have no force or effect.

5.2 Voting.

(a) Each Membership shall be entitled to one vote, regardless of the number of Owners of the Lot to which the Membership is appurtenant. Except as otherwise specified in this Community Charter or the Bylaws, the vote for each Lot shall be exercised by the Voting Delegate representing the Election District of which the Lot is a part, as provided in Section 4.5. The Voting Delegate shall cast all such votes in the manner provided in Section 4.13. No vote shall be exercised on behalf of any Lot if any assessment for such Lot is delinquent after Notice and Opportunity to be Heard.

(b) In any situation where a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of such Lot, fractional voting shall not be allowed. If the Owners of a Lot cannot agree among themselves as to how to cast their vote when they are



required to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Membership, unless objection thereto is made to the chairperson of the meeting at the time the vote is cast. If more than one vote is cast for any particular Membership, none of such votes shall be counted and all of such votes shall be deemed null and void.

(c) In any election of Directors to the Board of Directors, each Membership shall have the number of votes equal to the number of Directors to be elected to the Board of Directors by such election. Cumulative voting shall not be allowed in the election of Directors to the Board of Directors or for any other purpose.

(d) Notwithstanding the terms and conditions of paragraph 5.2(a) above, the Association shall have no voting rights for any Membership appurtenant to any Lot owned by the Association.

(e) The voting rights of any Membership may be suspended by the Association, after Notice and Opportunity to be Heard, if any Owner holding such Membership is not in good standing as a result of any uncured default under the Association Documents.

ARTICLE 6 BOARD OF DIRECTORS

6.1 Powers of the Board of Directors.

(a) Except as provided in this Community Charter, the Articles and the Bylaws, the Board of Directors may act on behalf of the Association in all instances.

(b) The Board of Directors may not act on behalf of the Association to: (i) amend this Community Charter; (ii) terminate the master planned community created pursuant to this Community Charter; (iii) elect Directors to the Board of Directors, other than to fill a vacancy for the unexpired portion of a Director's term; or (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

(c) By resolution, the Board of Directors may delegate portions of its authority to an executive committee or other committees, or to officers, agents, employees or managers of the Association. No such delegation shall relieve the Board of Directors of ultimate responsibility for management of the Association's affairs.

6.2 Appointment or Election of Directors. Notwithstanding anything else to the contrary contained in this Community Charter or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and officers during the Development and Sale Period. Declarant may voluntarily surrender its right to appoint and remove Directors and officers prior to the expiration of the Development and Sale Control Period, but, in that event, Declarant may require, for the remainder of the Development and Sale Period, that specific actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Promptly after the expiration of the Development and Sale Period, the Voting Delegates shall elect a Board of Directors. Such Directors shall take office upon election.

6.3 Removal of Members of the Board of Directors. Notwithstanding any provision of this Community Charter or any other Association Document to the contrary, the Owners, by a vote of at least 67 percent of all Memberships represented (in person or by proxy) and entitled to vote at any meeting at which a quorum is present, the notice of which indicates such purpose, may remove any Director, with or without cause, other than a Director appointed by Declarant. Only Declarant may remove a Director appointed by Declarant during the Development and Sale Period, or fill a vacancy created by the removal of a Director appointed by Declarant during the Development and Sale Period.

ARTICLE 7 ASSESSMENTS, COMMON EXPENSES, BUDGETS, LIENS AND REAL ESTATE TRANSFER FEE

7.1 Obligations for Assessments.

(a) Declarant, for each Lot it owns, hereby covenants and agrees, and each Owner, by accepting a deed to a Lot (regardless of whether expressly stated in such deed) or entering into a contract of sale for any portion of the Property, shall be deemed to have covenanted and agreed, to pay to the Association all: (i) General Assessments; (ii) Service Area Assessments; (iii) Special Assessments; (iv) Specific Assessments; (v) Real Estate Transfer Fees; and (vi) other fines and charges that the Association is required or permitted to levy or impose on such Owner or such Owner's Lot pursuant to this Community Charter or any other Association Document.

(b) In addition to the Assessment Lien against an Owner's Lot, each Assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment arose. No Owner shall be exempt from liability for any such Assessment or other charge by waiving the use or enjoyment of any Common Area or by abandoning a Lot against which such Assessments or other charges are made or by any other means. No abatement of any Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to any Common Area, from any action taken to comply with any law or any determination of the Board of Directors, or for any other reason. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason, including without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Community Charter or any other Association Document. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner.

(c) Except as provided in this paragraph 7.1(c) and paragraph 7.9(a) below, the obligation to pay to the Association any Assessment or other charges levied against any Lot shall be a joint and several obligation of the Owner of such Lot and such Owner's successors, assigns, heirs, devisees and personal representatives. A Person acquiring fee simple title to a Lot shall be jointly and severally liable with the former Owner of the Lot for all Assessments and other



charges that had accrued and were payable when such Person acquired fee simple title to the Lot, for so long as such Person holds fee simple title to the Lot.

(d) Each Assessment or other fine or charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other charge, including reasonable attorneys' fees and disbursements, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same, or any other right or remedy of the Association.

(e) The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with Declarant, Participating Builders or other entities for payment of Common Expenses.

(f) During the Development and Sale Period, Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy (in addition to any Assessments paid by Declarant). Any such subsidy may be in cash and/or "in-kind" contribution of services, materials, or a combination thereof. Any such subsidy may be treated as either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Any such anticipated subsidy by Declarant and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the Association's budget. Payment of such subsidy by Declarant in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years unless otherwise provided in a written agreement signed by the Association and Declarant.

7.2 Share of Common Expenses.

(a) Common Expenses. Except as the Association Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered Common Expenses. Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board of Directors finds necessary or appropriate. The characterization of a particular expense as a Common Expense shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Community Charter, any Charter Supplement, any other recorded or unrecorded covenants or agreements, or any applicable laws, whether statutory or common law.

(b) Allocation. Except as otherwise set forth in this Community Charter or a Charter Supplement, all Common Expenses for a fiscal year shall be allocated equally among all Lots that have been created prior to the first day of such fiscal year in accordance with each Lot's Share of Common Expenses. The Share of Common Expenses of each Lot shall be determined as follows:

$$\text{Share of Common Expenses of a} = \frac{1}{(0.5 \times \text{number of Lots owned by Participating Builders}) + \text{number}}$$



Lot owned by a _____ of Lots owned by Homebuyers
Homebuyer

Share of Common _____ 0.5
Expenses of a _____ = (0.5 x number of Lots owned by Participating Builders) + number
Lot owned by a _____ of Lots owned by Homebuyers
Participating Builder

These allocations are intended to differentiate between Lots owned by Homebuyers and Lots owned by Participating Builders, because Lots owned by Homebuyers have completed Dwelling Units upon them, to take into account anticipated differences in the level of use of Common Area and related impacts on the Association's costs and activities. Accordingly, a transfer of any Lot from a Participating Builder to a Homebuyer will change the Share of Common Expenses of all other Lots as well as that Lot. To ease the administration of this system of allocation, the Board of Directors of the Association may establish fixed dates or periods for recalculation of the Shares of Common Expenses based upon transfers of Lots from Participating Builders to Homebuyers that have occurred. For example, the Board of Directors may provide for recalculation of the Lots' Shares of Common Expenses due to changes in Lot ownership on a monthly basis, a quarterly basis, a semi annual basis or any other time period that the Board of Directors deems advisable from time to time.

(c) Reallocation upon Addition or Withdrawal of Lots. If any Lots are added to or withdrawn from the Brown Ranch as herein provided, the Shares of Common Expenses for all Lots after such addition or withdrawal shall be recalculated in accordance with the formula set forth in paragraph 7.2(b) above.

(d) Declarant's Obligations. Until the Association levies an Assessment, Declarant shall pay all Common Expenses. With respect to those Assessments that Declarant is obligated to pay after the commencement date for Assessments, Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. Such "in-kind" contributions shall abate or reduce Declarant's assessment obligation by the commercially reasonable value of such contributions, as determined in the Board of Director's reasonable discretion.

7.3 Budgets.

(a) Adoption. Prior to the first levy of a General Assessment for Common Expenses, and, thereafter, at least 60 days before the beginning of each fiscal year, the Board of Directors shall adopt a proposed annual budget for the Association for the following fiscal year, which proposed budget shall, among other things, set forth (i) the Board of Directors' estimates of Common Expenses to be incurred for the next fiscal year; (ii) the amount of funds for such Common Expenses that the Board of Directors proposes to raise through General Assessments; and (iii) the amount of funds for such Common Expenses that the Board of Directors proposes to raise through Special Assessments. Such budget may include an amount for contingencies and shall include amounts deemed necessary or desirable for deposits to create, replenish or add to a fund for capital repairs, replacements and improvements.



(b) Ratification. Within thirty days after adopting a proposed budget, the Board of Directors shall deliver a summary of the proposed budget to all Owners and set a date for a meeting of the Voting Delegates to consider ratification of the proposed budget. The date of such meeting shall not be less than fifteen days, nor more than fifty days, after the delivery of the summary of the proposed budget to the Owners. The proposed budget shall become effective (and shall be deemed ratified by the Owners) unless at that meeting Voting Delegates representing at least 67% of the votes allocated to all Memberships, and, during the Development and Sale Period, Declarant, rejects the proposed budget. A quorum is not required for such meeting. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next fiscal year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

(c) Amendment. If the Board of Directors deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under paragraph 7.3(b) above, the Board of Directors may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Voting Delegates to consider ratification of the proposed amendment. The date of such meeting shall not be less than fifteen days, nor more than fifty days, after the delivery of the summary of the proposed amendment. Unless at that meeting Voting Delegates representing at least 67% of the votes allocated to all Memberships, regardless of whether a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

(d) Service Area Assessments. At least 60 days before the beginning of each fiscal year, the Board of Directors shall adopt a proposed annual budget for each Service Area that reflects the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the following fiscal year. Such budget shall include a contribution to a reserve fund for repairs and replacements of capital items maintained as a Service Area Expense. Service Area Expenses shall be allocated and levied as a Service Area Assessment equally among all Lots within the Service Area(s) benefited thereby; provided however, if so specified in the Charter Supplement applicable to the Service Area or a resolution of the Board of Directors or if so directed by petition signed by a majority of the Owners within such Service Area, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Lots in proportion to the benefit received. Within thirty days after adopting a proposed budget for a Service Area, the Board of Directors shall deliver a summary of the proposed budget and notice of the Service Area Assessment reflected in such budget to all Owners of Lots within such Service Area and set a date for a meeting of such Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fifteen days, nor more than fifty days, after the delivery of the summary of the proposed budget to such Owners. Such budget and the Service Area Assessment reflected in such budget shall automatically become effective (and shall be deemed ratified by the Owners whose Lots are within such Service Area) unless at the meeting referred to above Owners of at least 67% of the Lots within such Service Area and, during the Development and Sale Period, Declarant, rejects the proposed budget and Service Area Assessment. A quorum is not required for such meeting. If the Owners within any Service Area disapprove any line item (or all line items) of a proposed Service Area budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item(s) of the budget. If the Board of Directors fails for any reason to

determine a Service Area budget for any year, then until such time as a budget is determined for such Service Area, the budget for such Service Area in effect for the immediately preceding year shall continue for the current year.

7.4 General Assessments.

(a) After the Owners ratify an annual budget under paragraph 7.3(b) above, the Association shall levy an assessment for Common Expenses (a "General Assessment") on each Lot. The amount of the General Assessment payable with respect to each Lot shall equal the product obtained by multiplying (A) the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, by (B) that Lot's Share of Common Expenses determined pursuant to paragraph 7.2(b) above. General Assessments and Service Area Assessments shall be paid in such manner and on such dates as the Board of Directors may establish, which may include discounts for early payment or similar time/price differentials. The Board of Directors may require advance payment of Assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. If the Board of Directors so elects, General Assessments and Service Area Assessments may be paid in two or more installments. Unless the Board of Directors otherwise provides, General Assessments and Service Area Assessments shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or charges levied against his Lot, the Board of Directors may require any unpaid installments of all outstanding Assessments to be paid in full immediately. Any Assessment or installment thereof shall be considered delinquent on the 15th day following the due date unless otherwise specified by resolution of the Board of Directors.

(b) If the Owners ratify an amendment to the General Assessment portion of an annual budget pursuant to paragraph 7.3(c) above, the amount of the General Assessment levied against each Lot shall be adjusted accordingly, as shall the amount of each Owner's periodic installments, if any. Without limiting the generality of the foregoing, if an amendment increases the amount of General Assessments payable, then the amount of each installment due after such amendment shall equal the quotient obtained by dividing: (i) the difference obtained by subtracting the amount of General Assessments already paid as to a Lot for the applicable fiscal year from the amended amount of General Assessments payable for the applicable fiscal year, by (ii) the number of installment payments to be made over the remainder of that fiscal year.

(c) If the Owners fail to ratify an annual budget for any fiscal year prior to the beginning of that fiscal year, the Owners shall continue to pay the General Assessment (in periodic installments if periodic installments had been approved by the Board of Directors for the prior fiscal year) to the Association at the rate payable during the prior fiscal year until such time as the Owners ratify a new annual budget for the then current fiscal year. Once the Owners ratify a new annual budget, the Association shall levy on each Lot the General Assessment for the then current fiscal year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such fiscal year, giving the Owners credit for any installments that the Owners have previously paid to the Association during such fiscal year.



(d) The failure of the Association to levy a General Assessment for any fiscal year shall not be deemed a waiver, modification or release of the Owners' liability for the Share of Common Expenses allocated to such Owner's Lot.

(e) Notwithstanding anything to the contrary contained in this Section 7.4, if any Common Expense benefits fewer than all of the Lots, the Association may levy a General Assessment for such Common Expense exclusively against the Lots benefited thereby, equally or in any other equitable proportions as the Board of Directors deems appropriate. Such General Assessment may be levied whether or not a Service Area has been created with respect to such Lots. Without limiting the generality of the foregoing, any Common Expenses attributable to a Limited Common Area shall be shared on a pro rata basis among the Lots to which such Limited Common Area is appurtenant (meaning those Limited Common Areas that an Owner is entitled to use and enjoy by virtue of such Owner's ownership of a particular Lot designated as one of the Lots benefited by and entitled to use such Limited Common Area).

7.5 Special Assessments. The Assessments that the Association may levy pursuant to this Section 7.5 are referred to in this Community Charter as "Special Assessments." The Association may levy Special Assessments to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Community Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Voting Delegates representing more than 50% of the votes attributable to the Lots that would be subject to such Special Assessment, and shall be allocated equally among all such Lots. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Lots in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under paragraph 7.3(d). In addition, during the Development and Sale Period, any Special Assessment shall also require Declarant's written consent. Special Assessments shall be payable in such manner and at such times as the Board of Directors determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Each Special Assessment levied against any Lot shall be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners in accordance with Section 7.3 above, and shall be paid as and when required by the Board of Directors.

7.6 Specific Assessments. The Assessments that the Association may levy pursuant to this Section 7.6 are referred to in this Community Charter as "Specific Assessments." The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board of Directors may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, and pest control), 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 Owner.



(b) To cover costs incurred in bringing any Lot(s) into compliance with the terms of the Association Documents, or costs incurred as a consequence of the conduct (whether action or omission) of the Owner or occupants of the Lot(s), their agents, contractors, employees, licensees, invitees, or guests or incurred as a consequence of any violation of any covenant or condition of an Association Document by the Owner or occupant of the Lot(s), their agents, contractors, employees, licensees, invitees, or guests.

(c) As a fine, penalty, fee or other charge imposed upon an Owner for the violation of any covenant or condition of any Association Document by the Owner or occupants of the Owner's Lot, their agents, contractors, employees, licensees, invitees, or guests.

(d) To cover all enforcement costs, collection costs, attorneys' fees and other costs and expenses incurred by the Association as a result of or in connection with any of the foregoing described above in this Section 7.6.

(e) Specific Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners in accordance with Section 7.3 above.

(f) With respect to any Specific Assessment, or portion thereof, levied pursuant to paragraph (c) or (d) above, other than as a late charge, interest, fee or collection cost, the Owner of the Lot against which the Association seeks to levy the Specific Assessment shall be provided Notice and Opportunity to be Heard. Owners of Lots against which Specific Assessments have been levied shall pay such Specific Assessments within thirty days of receipt of demand therefor from the Association, unless such demand states a different time period for payment.

(g) The Association may also levy a Specific Assessment against the Lots which are subject to the jurisdiction of a Subassociation to reimburse the Association for costs incurred in bringing the property subject to the jurisdiction of the Subassociation into compliance with the provisions of this Community Charter, any Charter Supplement or any other Association Document; provided however, prior to levying such Specific Assessment, the Board of Directors shall provide the Owners of such Lots Notice and Opportunity to be Heard.

7.7 Real Estate Transfer Fees.

(a) Transfers Subject to Fee. Upon the occurrence of any Transfer, as defined below, the transferee under such transfer shall pay to the Association a real estate transfer fee (the "Real Estate Transfer Fee") equal to the fair market value, as defined below, of the Lot subjected to transfer, multiplied by the Real Estate Transfer Fee Rate determined in accordance with Section 7.7(b).

(b) Definitions. For purposes of this Section 7.7, the following terms shall have the meanings given below:

(i) **Transfer.** "Transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, assignment, lease or other transfer of beneficial ownership of any Lot, including but not limited to (A) the conveyance of fee simple title to any Lot, (B) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation (other than Declarant) which, directly or indirectly, owns one or more



Lots, and (C) the transfer of more than 50 per cent of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns one or more Units, but "transfer" shall not mean or include the transfers excluded under Section 7.7(c).

(ii) **Transferee.** "Transferee" means and includes all parties to whom any interest passes by a transfer, and each party included in the term "transferee" shall have joint and several liability for all obligations of the transferee under this Section 7.7.

(iii) **Fair Market Value.** In the case of a Transfer that is in all respects a bona fide sale, "fair market value" of the Lot subjected to transfer shall be the consideration, as such term is defined below, given for the transfer. In the case of a transfer that is a lease or is otherwise not in all respects a bona fide sale, fair market value of the Lot subjected to transfer shall be determined by the Association. A transferee may make written objection to the Association's determination within 15 days after the Association has given notice of such determination, in which event the Association shall obtain an appraisal, at the transferee's sole expense, from a real estate appraiser of good reputation, who is qualified to perform appraisals in Colorado, who is familiar with Montrose County real estate values, and who shall be selected by the Association. The appraisal so obtained shall be binding on both the Association and the transferee. The above provisions to the contrary notwithstanding, where a transferee does not make a full report of a transfer within 15 days after the time required by this Section 7.7 for making such report, the transferee shall be deemed to have waived all right of objection concerning fair market value, and the Association's determination of such value shall be binding.

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

(c) **Exclusions.** The Real Estate Transfer Fee shall not apply to any of the following, except to the extent that they are used for the purpose of avoiding the Real Estate Transfer Fee:

(i) any transfer to the United States, or any agency or instrumentality thereof, the state of Colorado, any county, city and county, municipality, district or other political subdivision of this state;

(ii) any transfer to a Declarant, the Association or the successors of such entities;



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

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

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

(vi) any transfer made (A) by a majority-owned subsidiary to its parent corporation or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no consideration other than issuance, cancellation or surrender of the subsidiary's stock; or (B) by a partner, member or a joint-venturer to a partnership, limited liability company or a joint venture in which the partner, member or joint venture has not less than a 50 percent interest, or by a partnership, limited liability company or joint venture to a partner, member or joint venture holding not less than a 50 percent interest in such partnership, limited liability company or joint venture, in each case for no consideration other than the issuance, cancellation or surrender of the partnership, limited liability company or joint venture interests, as appropriate; or (C) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Lot is transferred generally pro rata to its shareholders and no consideration is paid other than the cancellation of such corporation's stock; or (D) by a partnership, limited liability company or a joint venture to its partners, members or joint venturers, in connection with a liquidation of the partnership, limited liability company or joint venture or other distribution of property to the partners, members or joint venturers, if the Lot is transferred generally prorata to its partners, members or joint venturers and no consideration is paid other than the cancellation of the partners', members' or joint venturers' interests; or (E) to a corporation, partnership, limited liability company, joint venture or other association or organization where such entity is owned in its entirety by the persons transferring the Lot and such persons have the same relative interests in the transferee entity as they had in the Lot immediately prior to such transfer, and no consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the transferee entity; or (F) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the transferor(s) and the transferee(s) are and remain under common ownership and control as determined by the Board of Directors in its sole discretion applied on a consistent basis; provided, however, that no such transfer or series of transactions shall be exempt unless the Board of Directors finds that such transfer or series of transactions (1) is for no consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the transferor or transferee, as appropriate, (2) is not inconsistent with the intent and meaning of this Subsection (vi), and (3) is for a valid business purpose and is not for



the purpose of avoiding the obligation to pay the Real Estate Transfer Fee. For purposes of this Subsection (vi) (F), a transfer shall be deemed to be without consideration (x) if the only consideration is a book entry made in connection with an intercompany transaction in accordance with generally accepted accounting principles, or (y) no person or entity which does not own a direct or indirect equity interest in the Lot immediately prior to the transfer becomes the owner of a direct or indirect equity interest in the Lot (an "Equity Owner") by virtue of the transfer, and the aggregate interest immediately prior to the transfer of all Equity Owners whose equity interest is increased on account of the transfer does not increase by more than 20 percent (out of the total 100 percent equity interest in the Lot), and no individual is entitled to receive directly or indirectly any consideration in connection with the transfer. In connection with considering any request for an exception under this Subsection (vi)(F), the Board of Directors may require the applicant to submit true and correct copies of all relevant documents relating to the transfer and an opinion of the applicant's counsel (such opinion and counsel to be reasonably acceptable to the Board of Directors) setting forth all relevant facts regarding the transfer, stating that in their opinion the transfer is exempt under this Subsection (vi)(F), and setting forth the basis for such opinion;

(vii) any transfer made solely for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses, and any exchange of Lots between Declarant and any original purchaser from Declarant of the one or more Lots being transferred to Declarant in such exchange. To the extent that consideration in addition to previously purchased Lots is paid to Declarant in such an exchange, the additional consideration shall be a transfer subject to the Real Estate Transfer Fee. To the extent that Declarant, in acquiring by exchange Lots previously purchased from Declarant, pays consideration in addition to transferring Lots, the amount of such additional consideration shall be treated as reducing the original assessable transfer and shall entitle an original purchaser from Declarant, who exchanges with Declarant Lots previously purchased from Declarant, to a refund from the Association of the amount of the Real Estate Transfer Fee originally paid on that portion of the original transfer;

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

(ix) any lease of any Lot (or assignment or transfer of any interest in any such lease) for a period of less than thirty years;

(x) any transfer solely of minerals or interests in minerals;

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



(xii) the subsequent transfer(s) of a Lot involved in a “tax free” or “tax deferred” trade under the Internal Revenue Code wherein the interim owner acquires property for the sole purpose of reselling that property within [30 days] after the trade. In these cases, the first transfer of title is subject to Real Estate Transfer Fee and subsequent transfers will only be exempt as long as a Real Estate Transfer Fee has been paid in connection with the first transfer of such Lot in such exchange;

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

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

(xv) any transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where consideration is paid for, or in connection with, such transfer; however, unless such transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the transferee in the transferor immediately prior to the transfer. For example, if corporation A owns 60 percent of corporation B, and corporation B owns 100 percent of corporation C and corporation C conveys a Lot to corporation A for \$2,000,000, 60 percent of the Real Estate Transfer Fee would be exempt and a Real Estate Transfer Fee would be payable only on \$800,000 (i.e., 40 percent of the \$2,000,000 consideration); and

(xvi) the consecutive transfer of a Lot wherein the interim owner acquires such Lot for the sole purpose of immediately reconveying such Lot, but only to the extent there is no consideration to the interim owner and such interim owner receives no right to use or enjoyment of such Lot, provided the Board of Directors specifically approves such exemption in each particular case. To the extent that consideration is paid to, or for the benefit of, the interim owner, the additional consideration shall be a transfer subject to the Real Estate Transfer Fee. In these cases, the first transfer of title is subject to the Real Estate Transfer Fee and subsequent transfers will only be exempt as long as a Real Estate Transfer Fee has been paid in connection with the first transfer of such Lot in such consecutive transaction and only to the extent there is no consideration to the interim owner.

(d) Payment and Reports. The Real Estate Transfer Fee shall be due and payable by the transferee to the Association at the time of the transfer giving rise to such Real Estate Transfer Fee, but if the transferee fails to pay the Real Estate Transfer Fee, then the transferor shall be jointly and severally liable with the transferee for the payment of the Real Estate Transfer Fee. With such payment the transferee shall make a written report to the Association on forms prescribed by the Association, fully describing the Transfer and setting forth the true, complete and actual consideration for the Transfer, the names of the parties thereto, the legal description of the Lot transferred, and such other information as the Association may reasonably require.



(e) Real Estate Transfer Fee Rate. The Board of Directors shall have the sole discretion to determine the amount of the Real Estate Transfer Fee Rate. However, the same Real Estate Transfer Fee Rate shall apply to all Lots. The Real Estate Transfer Fee Rate shall be two-tenths of one percent (0.2%) unless and until the Board of Directors shall adopt a different rate, provided that the Board of Directors shall not set a rate higher than two percent (2%).

(f) Purpose. The proceeds of the Real Estate Transfer Fee shall be expended or held in reserve funds for such purposes as the Board of Directors shall determine, except that such proceeds shall not be used to pay routine or anticipated Common Expenses or Service Area Expense. For example, but without limitation, the proceeds of the Real Estate Transfer Fee may be used to acquire or construct a recreation center. Without limiting the generality of the foregoing, the Board of Directors may, but is not obligated to, transfer any proceeds of the Real Estate Transfer Fee to one or more non-profit corporations or foundations whose primary purpose is the improvement or betterment of the Brown Ranch.

7.8 Assignment of Assessments. The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

7.9 Assessment Lien.

(a) The Association shall have a lien ("Assessment Lien") on each Lot for any Assessment levied against that Lot and any interest, attorneys' fees and disbursements and costs of collection imposed against its Owner under any Association Document. The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due; such Assessment Lien shall not be limited or postponed if the Board of Directors permits an Assessments to be paid in installments. In addition, upon any default by an Owner in the payment of a General Assessment (or any other Assessment payable in installments), the Association may, after giving such Owner written notice of such default and an opportunity to cure such default during a time period established by the Association (or 30 days, if no cure period is so established), accelerate the balance of the Assessment or the installments of the Assessment for the then-current fiscal year.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Lot, including any declaration of homestead rights recorded after the time the Lot becomes part of the Brown Ranch, except:

(i) liens and encumbrances recorded prior to the Recordation of this Community Charter;

(ii) a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, subject to paragraph (c) below; and

(iii) liens for real estate taxes and other governmental assessments or charges against the Lot.

(c) An Assessment Lien is also prior to a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent to the extent of an amount equal



to the General Assessments, Service Area Assessments, the Special Assessments and the Specific Assessments that would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any Person holding a lien senior to any part of the Assessment Lien of an action or a nonjudicial foreclosure either to enforce or extinguish the Assessment Lien.

(d) The recording of this Community Charter constitutes record notice and perfection of an Assessment Lien on each Lot. No further Recordation of any claim of any Assessment Lien is required. The acceptance of a deed to a Lot or execution of a contract of sale for any portion of the Property shall constitute a waiver by the Owner of such Lot or portion of the Property of the homestead exemption as against any Assessment Lien.

(e) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six years after the full amount of the Assessment secured thereby becomes due.

(f) This Section 7.9 does not prohibit (i) actions or suits to recover sums secured by an Assessment Lien, whether pursuant to Section 7.1(d) or otherwise, or (ii) the Association from taking a deed in lieu of foreclosure. The Association may sue to recover unpaid Assessments and other charges without foreclosing or waiving the Assessment Lien securing the same.

(g) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner, ex parte, to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

(h) An Assessment Lien may be foreclosed in like manner as a mortgage on real estate. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While a Lot is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no Assessment shall be levied on it; and (iii) each other Lot shall be charged, in addition to its usual Assessment, its pro rata share of the Assessments that would have been charged to such Lot had it not been acquired by the Association.

7.10 Date of Commencement of Assessments. The obligation to pay Assessments shall commence as to each Lot as follows. Immediately upon the transfer of title to the Lot from Declarant to a Participating Builder, the Participating Builder shall be obligated to pay Assessments at one-half (1/2) the rate of General Assessments, Service Area Assessments and Special Assessments that would otherwise be payable with respect to such Lot; provided however, that the Participating Builder shall be obligated to pay the full amount of all Specific Assessments levied against such Lot and shall not be obligated to pay any Real Estate Transfer Fee with respect to such Lot. In all other circumstances, including, without limitation, the conveyance to a Homebuyer of such Lot with a Dwelling Unit thereon, the obligation to pay Assessments in full shall commence as to each Lot on the date when title to such Lot is conveyed to the first Homebuyer to purchase such Lot. The first annual General Assessment and Service



Area Assessment, if any, levied against each Lot shall be prorated at the time Assessments commence against the Lot, based upon the number of days remaining in the fiscal year.

7.11 Failure to Assess. The failure of the Board of Directors 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 from the obligation to pay Assessments. In such event, each Owner shall continue to pay General Assessments and Service Area Assessments at the rate established for 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 shortfall.

7.12 Exempt Property. The following property shall be exempt from payment of General Assessments, Service Area Assessments and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by a Subassociation, or by the members of a Subassociation or by the members of a Service Area as tenants-in-common, for the common use and enjoyment of all members within the Subassociation or the Service Area.

In addition, the Association may, by resolution, grant exemptions to certain Persons that have qualified for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Community Charter for purposes listed in Section 501(c) of the Internal Revenue Code.

7.13 Capitalization of the Association. The first Owner of each Lot other than Declarant or a Participating Builder shall make a non-refundable contribution to the working capital of the Association in an amount equal to one-sixth of the annual General Assessment per Lot for that year, which funds shall be held by the Association as a reserve fund. The Association shall have no obligation to pay interest on such non-refundable contribution to any Owner. This amount shall be in addition to, not in lieu of, the annual General Assessment and any Service Area Assessment and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title and shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot. Such reserve funds shall be maintained by the Association in a segregated account and may be used by the Association for: (a) capital expenditures; and (b) shortfalls in the collection of Assessments and Common Expenses or Service Area Expenses that are unanticipated or in excess of those anticipated in the applicable budget. Upon the sale of a Lot by an Owner, the Association shall not be obligated to return to the selling Owner all or any part of such non-refundable contribution, but the selling Owner shall be entitled to a credit from his purchaser for the amount of the contribution to the reserve fund.

7.14 Use and Consumption Fees. The Board of Directors may charge use and consumption and activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board of Directors may, from time to time, determine the



amount and method of determining such fees. Different amounts of such fees may be charged to different classes of users, for example, Owners and non-Owners.

7.15 Estoppel Certificates; Notices to Mortgagees.

(a) Upon payment to the Association of such reasonable administrative fee as may be determined from time to time by the Board of Directors, the Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee, upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within ten (10) business days after the Association's receipt of the request and shall be binding on the Association, the Board of Directors and every Owner. If no statement is furnished to the Owner, the Mortgagee or their designee, then the Association shall have no right to assert an Assessment Lien upon the Lot for unpaid Assessments which were due as of the date of the request.

(b) The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for more than sixty days after the same shall have become due, if such Mortgagee has previously delivered to the Association a written request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment with respect to such Lot, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as a lien of the Mortgage held by such Mortgagee.

ARTICLE 8 MAINTENANCE OF COMMON AREAS AND LOTS

8.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

- (i) Common Area;
- (ii) all landscaping and other flora, parks, structures, and improvements, including any entry features, sidewalks, landscape irrigation systems, bike and pedestrian pathways/trails, situated upon the Common Area;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, structures and improvements within public rights-of-way within or abutting the Property or upon such other public land adjacent to the Property as deemed necessary in the discretion of the Board of Directors; and
- (v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Community Charter, any Charter



Supplement, any Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or appropriate.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board of Directors, to perform required maintenance or repairs, unless membership representing 67% or more of the total votes in the Association (excluding any votes held by the Declarant) vote in favor of discontinuing such operations and, during the Development and Sale Period, Declarant, agree in writing to discontinue such operation.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Subassociation or (ii) such property is dedicated by Declarant or the Association to any local, state, or federal governmental or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or appropriate.

(d) Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Community Charter or any other means during the Development and Sale Period except within the written consent of Declarant.

(e) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessments, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Community Charter, a Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Limited Common Areas shall be a Service Area Expense assessed as a Service Area Assessment solely against the particular Units to which the Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

8.2 Maintenance of Lots.

(a) Each Owner, at such Owner's sole cost and expense, shall maintain such Owner's Lot and the improvements and landscaping located thereon, or constituting a part thereof, including any landscaping located in public right-of-way adjacent to such Owner's Lot, in good order and repair and in a manner consistent with all Association Documents, unless such



maintenance responsibility is otherwise assumed by or assigned to the Association or a Subassociation. Each Owner shall also maintain all landscaping located between the street curb and the property line(s) of the lot closest to the curb.

(b) If, in the reasonable judgment of the Association, an Owner fails to maintain the Owner's Lot, the landscaping located thereon or in the public right-of-way adjacent to such Owner's Lot or the exterior of any improvements located thereon in accordance with the Association Documents, the Association may, after Notice and Opportunity to be Heard, enter upon such Lot and perform such maintenance or repair as the Association deems necessary or advisable and charge all costs and expenses incurred by the Association in connection therewith to such Owner as a Specific Assessment.

8.3 Service Areas. Upon resolution of the Board of Directors, the Owners of Lots within each Service Area shall be responsible for paying, through Service Area Assessments, the costs of operating maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Service Area. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Service Area and adjacent public roads, regardless of ownership and regardless of the facts that such maintenance may be performed by the Association; provided however, all Service Areas which are similarly situated shall be treated the same. The records of the Association shall separately account for the Service Area Assessments collected and expended with respect to each Service Area.

Any Subassociation having responsibility for maintenance within a particular Service Area pursuant to additional covenants applicable to such Service Area shall perform such maintenance responsibility in a manner consistent with and all Association Documents. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Lots within such Service Area as provided in Section 7.6.

8.4 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with all Association Documents. The Association, and/or an Owner and/or a Subassociation shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

8.5 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereof.



(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

8.6 Covenant to Share Costs. Adjacent to or in the vicinity of the Property, there may be certain residential, nonresidential or recreational areas, including without limitation single family residential developments, retail, commercial, or business areas, golf courses, fishing areas, hiking areas, hunting areas and ski areas, which are not subject to this Community Charter and which are neither Lots nor Common Area as defined in this Community Charter (hereinafter "adjacent properties"). The owners or operators of such adjacent properties shall not be Members of the Association, shall not be entitled to vote, nor shall they be subject to assessment under Article 7 of this Community Charter.

The Association may enter into agreements with the owners or operators of portions of the adjacent properties (each such agreement, a "Covenant to Share Costs"):

(a) to obligate the owners or operators of such adjacent properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Property;

(b) to permit use of any recreational and other facilities located on such adjacent property by the Owners of all Lots or by the Owners of Lots within specified Service Area, and/or

(c) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Property.

The owners or operators of such adjacent properties shall be subject to assessment by the Association only in accordance with the provisions of such agreement(s). If the Association is obligated to share costs incurred by the owners of such adjacent properties, the Covenant to Share Costs shall provide whether such payments by the Association shall constitute Common Expenses or Service Area Expenses of the Association. The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Community Charter except as



otherwise specifically provided in a Covenant to Share Costs executed by such owners or operators.

ARTICLE 9 DESIGN REVIEW

9.1 General.

(a) Improvements. All Improvements are subject to standards for design, landscaping and aesthetics adopted pursuant to this Article 9 ("Design Guidelines") and the approval procedures set forth in this Article 9, except as may be provided otherwise in this Article 9 or the Design Guidelines. No Owner other than Declarant may, without the prior written approval of the Design Reviewer, make any Improvements. No prior approval of the Design Reviewer is necessary to repaint the exterior of an existing structure using the color scheme for such structure most recently approved by the Design Reviewer or to rebuild or restore any damaged structure in a manner consistent with the plans and specifications most recently approved for such structure by the Design Reviewer. In addition, no approval is required for work done to the interior of a structure, except that window coverings visible from outside of the structure and modifications to the interior of screened porches, patios and any other portions of a structure that are visible from outside of the structure do require prior written approval of the Design Reviewer. This Article 9 shall not apply to the Association's activities during the Development and Sale Period or to Declarant's design and construction activities at any time.

(b) All private driveways must conform to the requirements and guidelines established by the Design Review Board for that portion of the Property in which the Lot served by such driveway is located.

(c) No fencing shall be permitted on any Lot, unless approved by the Design Review Board (which may, in its discretion, determine that no fencing of Lots is permitted within the Brown Ranch, or any portion thereof, provided that the Design Review Board may not require removal of pre-existing fencing which is in compliance with the Design Guidelines and had been approved by the Design Review Board at the time of its installation). Without limiting the generality of the foregoing, the Design Review Board may adopt guidelines, standards and Rules and Regulations regarding fencing, which shall be complied with by all Owners.

9.2 Design Review Authority .

(a) Declarant. Until the expiration of the Development and Sale Period, Declarant shall have exclusive authority to: (i) promulgate, modify, amend and withdraw Design Guidelines from time to time; (ii) to review and act upon all applications for review of proposed Improvements; and (iii) to grant variances from the application of the Design Guidelines. Declarant may designate one or more Persons to act on its behalf in reviewing any application. In taking any or all of the actions described in clauses (i), (ii) and (iii) above, Declarant and its designee act solely in Declarant's interest and owe no duty to any other Person or the Association. From time to time, Declarant may delegate any or all of its rights under this Article 9 to other Persons or groups of persons, including the Design Review Board appointed pursuant to Section 9.2(b). Any such delegation shall be in writing, shall specify the scope of



responsibilities delegated, and shall be subject to: (i) Declarant's right to revoke such delegation at any time and reassume its prior control; and (ii) Declarant's right to veto any decision which it determines, in its sole and absolute discretion, to be inappropriate or inadvisable; provided, however, that Declarant has no duty to any other Person or to the Association to veto any decision. So long as Declarant has any rights under this Article 9, the jurisdiction of any other Person or the Association with respect to the review and/or approval of proposed Improvements and the other matters covered by this Article 9 shall be limited to such matters, if any, as Declarant specifically delegates.

(b) Design Review Board.

(i) Upon expiration of Declarant's rights under this Article 9, the Board of Directors shall appoint a Design Review Board to assume jurisdiction over matters covered by this Article 9. In addition, if Declarant delegates authority pursuant to Section 9.2(a) to the Design Review Board, the Board of Directors shall appoint a Design Review Board to assume jurisdiction over the matters within the scope of such delegation. Notwithstanding anything to the contrary contained herein, Declarant reserves the right to delegate authority pursuant to Section 9.2(a), at any time and from time to time, to a separate and distinct Design Review Board with respect to different phases or portions of the Brown Ranch, or with respect to different uses, housing types or locations within the Brown Ranch, as more particularly described in the definition of "Design Review Board" in Article 2 above. In such event, the Board of Directors shall appoint persons to each Design Review Board to which Declarant delegates authority.

(ii) The Design Review Board shall consist of three, five or seven persons (as determined by the Board of Directors) who shall serve and may be removed and replaced in the discretion of the Board of Directors. The Board of Directors may also appoint alternate members of the Design Review Board to act when there is not a quorum of regular members of the Design Review Board. The regular term of office for each member of the Design Review Board shall be one year. Any such member may be removed with or without cause by the Board of Directors at any time by written notice. A successor appointed to fill any vacancy on the Design Review Board shall serve the remainder of the term of the former member. Members of the Design Review Board need not be Owners or representatives of Owners. The Design Review Board may, but need not, include architects, engineers or similar professionals.

(iii) Until expiration of Declarant's rights under this Article 9, the Design Review Board shall notify Declarant in writing within three business days of any action (i.e., approval, partial approval or disapproval) it takes under this Article 9. A copy of the application and any additional information Declarant may require shall accompany the notice. Declarant shall have 10 business days after receipt of such notice to veto any such action, in its sole and absolute discretion, by written notice to the Design Review Board.

(iv) Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Design Review Board or until Declarant's rights under this Article 9 expire, the Association shall have no jurisdiction over the review and/or approval of proposed Improvements and the other matters covered by this Article 9.



(v) Notwithstanding anything to the contrary contained herein, after the Development and Sale Period, the Board of Directors shall have the right to create a separate and distinct Design Review Board, at any time and from time to time, with respect to different phases or portions of the Brown Ranch, or with respect to different uses, housing types or locations within the Brown Ranch, as more particularly described in the definition of "Design Review Board" in Article 2 above.

(c) Design Reviewer. For purposes of this Article 9, the Person having jurisdiction in a particular case shall be referred to as the "Design Reviewer." The Design Reviewer may be Declarant, Declarant's designee, a Person or group of Persons to whom Declarant has delegated authority or the Design Review Board.

9.3 Design Review Board Procedures, Guidelines and Rules.

(a) Design Review Board Operation. The Design Review Board shall select its own chairman and vice-chairman from among its members. The chairman or, in the chairman's absence, the vice-chairman shall be the presiding officer of its meetings. In the absence of both the chairman and the vice-chairman from a meeting, the members present shall appoint a member to serve as acting chairman at such meeting. If a Design Review Board is appointed, it shall meet from time to time as necessary to perform its duties hereunder. Meetings shall be held upon call of the chairman or vice-chairman at the offices of the Association or at such other location in Montrose County, Colorado as shall be selected by the chairman. A majority of members shall constitute a quorum for the transaction of business. An alternate member may participate at any meeting at which there is not a quorum and shall have all of the authority of a regular member while so participating. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Board shall constitute the action of the Design Review Board on any matter before it. The Design Review Board may establish guidelines or rules and regulations with respect to its operation and with respect to procedures, materials to be submitted and additional factors that will be taken into consideration in connection with the review of any application for approval of any proposed Improvement. Unless limited by any delegation by Declarant, such guidelines or rules and regulations may specify circumstances under which the strict application of limitations or restrictions under this Community Charter may, in the sole and absolute discretion of the Design Review Board, be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. Unless limited by any delegation by Declarant, such guidelines or rules and regulations may also waive the requirement for approval of certain Improvements or exempt certain Improvements from the requirement for approval if, in the sole and absolute discretion of the Design Review Board, such approval is not reasonably required to carry out the purposes of this Community Charter. Such guidelines or rules may elaborate or expand upon the provisions herein relating to procedures and criteria for approval. A copy of the Design Review Board's guidelines or rules and regulations, if any, shall be filed with the Secretary of the Association and shall be maintained in the records of the Association and shall be subject to inspection by all Owners and Mortgagees. The guidelines or rules and regulations of the Design Review Board may differ for different portions or phases of the Brown Ranch, or with respect to different uses, housing types or locations within the Brown Ranch, and separate and distinct Design Review Boards may adopt different guidelines or rules and regulations or may not adopt any guidelines



or rules and regulations. Notwithstanding any provision of this Article 9 or this Community Charter to the contrary, any guidelines or rules and regulations of the Design Review Board shall apply only to an application for approval of an Improvement for which the Design Review Board is the Design Reviewer and shall not in any manner limit or impair Declarant's right to veto the action of the Design Review Board pursuant to Section 9.2(b).

(b) Professionals. The Design Review Board is hereby authorized to retain, at the expense of the Association, the services of one or more consulting architects, landscape architects, engineers, urban designers or other professionals to advise and assist the Design Review Board in performing the design review functions prescribed in this Article 9.

(c) Design Review Board Representative. The Design Review Board may, from time to time, by resolution in writing adopted by a majority of the members, designate a Design Review Board Representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the Design Review Board, except the granting of approval to any Improvement and the granting of variances. The action of such Design Review Board Representative within his or her authority or the written consent or the vote of a majority of the members of the Design Review Board shall constitute action of the Design Review Board.

(d) Records of Actions. The Design Review Board shall report in writing to the Board of Directors all final action of the Design Review Board and the Board of Directors shall keep a record of such reported action for such period as the Board of Directors shall deem appropriate.

(e) Submission of Material. Any material to be submitted or notice given to the Design Review Board shall be submitted at the office of the Association.

9.4 Design Guidelines.

(a) Declarant's Authority. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Brown Ranch, as well as specific provisions that vary among uses, housing types or locations within the Brown Ranch, or may prepare separate Design Guidelines for different phases or portions of the Brown Ranch. Declarant may designate, at the time additional property is annexed to the Brown Ranch pursuant to this Community Charter, that such additional property shall be subject to a distinct set of design guidelines administered by a newly created Design Review Board having jurisdiction over that additional property, or that such additional property shall be subject to an existing set of design guidelines administered by an existing Design Review Board, or subject to a new set of design guidelines administered by an existing Design Review Board, or subject to an existing set of design guidelines administered by a newly created Design Review Board. As a result, it is possible that different portions of the Brown Ranch will be governed by different architectural and design guidelines administered by different Design Review Boards. All references in this Community Charter to the Design Review Board refer to each such committee, with respect to matters concerning that portion of the Property within the jurisdiction of such committee from time to time. Design Guidelines may exempt certain Improvements from the approval requirements of this Community Charter, and may waive strict application of the limitations and



restrictions of this Community Charter, particularly where application thereof would be unreasonable or unduly harsh under the circumstances. Design Guidelines may expand upon the provisions of this Community Charter relating to procedures and criteria for approval, and may specify rules and regulations pertaining to the construction of Improvements. Design Guidelines shall have the same force and effect as if they were set forth in this Community Charter, but the terms of this Community Charter shall prevail in the event of any conflict.

(b) Amendments. Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 9.2(a). Declarant's right to amend the Design Guidelines shall continue even if Declarant delegates reviewing authority to the Design Review Board or to any other Person or group of Persons, unless Declarant also delegates the power to amend the Design Guidelines. No delegation of the power to amend the Design Guidelines shall be inferred, unless the delegation of such power is explicit and expressly refers to this Section 9.4(b). Upon expiration of Declarant's rights under this Article 9, the Design Review Board may amend the Design Guidelines with the consent of the Board of Directors. In addition, any new Design Guidelines adopted by a Design Review Board after the Development and Sale Period shall require the consent of the Board of Directors. Amendments to the Design Guidelines shall apply prospectively only. Amendments shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any work on such structures that was not described in the plans or other materials previously approved by the Design Reviewer must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, except that amendments to the Design Guidelines may not address the interior of any structure, except with respect to window coverings and the interior of screened porches, patios and any other portions of a structure that are visible from outside of the structure. Amendments to the Design Guidelines may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

(c) Acknowledgment by Owners. Each Owner other than Declarant shall comply with the Design Guidelines. Without limiting the generality of the foregoing, by accepting title to any Lot or any other property within the Brown Ranch, an Owner acknowledges and agrees that the Design Guidelines applicable to that Lot or property may differ from the Design Guidelines applicable to other portions of the Brown Ranch, as determined by Declarant in its sole and absolute discretion during the Development and Sale Period or, after the Development and Sale Period, as determined by the Design Review Board, and that the Design Guidelines are intended to provide guidance to Owners, architects and contractors regarding matters of particular concern to the Design Reviewer. The Design Guidelines are not the exclusive basis for the Design Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval. The Design Reviewer shall make the Design Guidelines available to Owners and their architects and contractors upon request.

9.5 Design Review.

(a) Submission of Application. Prior to commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Design Reviewer at its offices (which, for the Design Review Board, shall be the offices of the Association) a written application for approval, which must be accompanied by



such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, samples of materials and colors, and other information as the Design Reviewer and/or the Design Guidelines require. The Design Reviewer may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Design Reviewer of all required materials in connection with the proposed Improvement, the Design Reviewer may postpone review of any materials submitted for approval. A Participating Builder may submit an application for approval of a proposed Improvement before such Participating Builder can identify the Lot on which such proposed Improvement will be constructed. However, if the Design Reviewer approves a proposed Improvement submitted by an Participating Builder for which a Lot has not been identified, the Participating Builder shall, at the time it identifies the Lot on which it proposes to construct such Improvement, submit an application to the Design Reviewer to obtain approval to construct the proposed Improvement on the specific Lot then identified by the Participating Builder.

(b) Criteria for Evaluation. In reviewing each application, the Design Reviewer may consider any factors it deems relevant, including, without limitation: (i) whether the proposed Improvement will be in compliance with the applicable Design Guidelines; (ii) harmony of the proposed external design with surrounding structures, with surrounding areas of the Brown Ranch and with the environment; (iii) whether the proposed Improvement might be detrimental to the appearance of the Brown Ranch in the vicinity of the proposed Improvement; (iv) whether the proposed Improvement might detract from the beauty, wholesomeness and attractiveness of the Brown Ranch or the enjoyment thereof by Owners; and (v) whether upkeep and maintenance of the proposed Improvement might become a burden on the Association. In reviewing an application submitted by an Participating Builder to construct a previously approved Improvement on a specific Lot, the Design Reviewer may consider any factors it deems relevant, including, without limitation: (vi) the proximity of a similar model home to the specific Lot and, in particular, whether a similar model home is located adjacent to such Lot or directly across a street from such Lot; and (vii) the proximity of a model home with a similar interior floor plan (regardless of the exterior appearance) to the specific Lot and, in particular, whether a model home with a similar interior floor plan is located adjacent to such Lot or directly across a street from such Lot. Decisions of the Design Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

(c) Fees; Professional Assistance. The Design Reviewer may establish and charge processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted. Such fees may not be identical or uniform for each proposed Improvement and may be based upon the estimated cost of the proposed Improvement or any other basis determined by the Design Reviewer in its reasonable judgment. Such fees may also include costs incurred in having professionals (such as, without limitation, architects and engineers) review any application. The Board of Directors may include the compensation of such professionals in the Association's annual operating budget; provided, however, unless the Design Reviewer for a particular application is a Design Review Board, the compensation of such professionals with respect to such application shall be



paid by Declarant (which compensation may be reimbursed to Declarant, in whole or in part, by the processing and review fees charged to the Applicant.

(d) Timing of Design Review Decisions. The Design Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Design Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Design Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. As part of any approval, the Design Reviewer may require that construction commence within a specified time period. The Design Reviewer shall notify the Applicant in writing of the final determination on any application no later than 30 days after its receipt of a completed application and all required submissions; however, with respect to any determination of the Design Review Board that is subject to Declarant's veto right under Section 9.2(b), the Design Reviewer shall notify the Applicant of the final determination within 50 days after its receipt of the completed application and all required submissions. If the Design Reviewer disapproves an application, it shall inform the applicant in writing the reasons for such disapproval.

(e) Failure of Design Reviewer to Act on Application. If the Design Reviewer fails to respond to an application within the applicable time period provided in Section 9.5(d), approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with a specific objective provision of the Design Guidelines (such as, without limitation, a height restriction) unless a written variance has been granted pursuant to Section 9.15.

(f) Decision of Design Reviewer is Final. The decisions of the Design Reviewer shall be final, conclusive and binding on all interested parties, and shall not be subject to appeal to the Board of Directors or to judicial review, so long as they are made in good faith and in accordance with the procedures required by the Association Documents and, if the decision was made by a Design Review Board, the rules and regulations of such Design Review Board.

(g) Matters Outside Scope of Design Review. In reviewing any matter, the Design Reviewer shall not be responsible for reviewing, nor shall its approval of any Improvement be deemed approval of, the Improvement from the standpoint of safety, whether structural or otherwise, functionality or conformance with building codes or other governmental laws or regulations. Under no circumstances shall the approval of any Improvement by the Design Reviewer limit or affect in any way the Applicant's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

9.6 No Waiver of Future Approvals. By accepting title to any Lot or other property within the Brown Ranch, an Owner acknowledges and agrees that the Persons reviewing applications under this Article 9 will change from time to time, and opinions on aesthetic matters, as well as interpretations and application of the Design Guidelines, may vary accordingly. It may not



always be possible to identify objectionable features of an Improvement until work is completed. In such cases, the Design Reviewer may elect not to require changes to objectionable features. However, the Design Reviewer may refuse to approve similar proposals in the future. Approval of applications, plans or other matters shall not constitute a waiver of the right to withhold approval as to any similar application, plans or other matters subsequently or additionally submitted for approval. The approval of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement or any similar proposals, plans, specifications or other materials submitted with respect to other Improvements.

9.7 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible, subject to delays caused by adverse weather conditions, and in complete conformity with the description of the proposed Improvement, any plans and specifications and other materials approved by the Design Reviewer in connection with the proposed Improvement and any conditions imposed by the Design Reviewer. If the Design Reviewer's approval requires that construction commence within a specified time period and construction does not commence within the required period, the approval shall expire, and the Applicant must reapply for approval before commencing any activities in connection with the Improvement. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Design Reviewer, in its sole and absolute discretion, grants an extension in writing.

9.8 Inspection of Work. The Design Reviewer and its designated representatives shall have the right to inspect any Improvement prior to or after completion, provided that the right of inspection shall terminate 60 days after the Design Reviewer shall have received a Notice of Completion from the Applicant. The Design Reviewer and its designated representatives may enter upon any Lot or other property upon which the Improvement is to be constructed at any reasonable time or times to inspect the progress, work status or completion of any Improvement. In addition to the remedies described in Section 9.14 below, the Design Reviewer may withdraw approval of any Improvement and require all activity at such Improvement be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled promptly after written notification to the Applicant specifying such deviations.

9.9 Notice of Completion. Upon completion of the Improvement, the Applicant shall give written Notice of Completion to the Design Reviewer. Until the date of receipt of such a Notice of Completion, the Design Reviewer shall not be deemed to have notice of completion of such Improvement, whether or not the Design Reviewer or its designated representatives have made inspections of the Improvement.

9.10 Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Reviewer finds that any Improvement has been commenced or completed without obtaining the approval of the Design Reviewer, or was not done in substantial compliance with the plans, specifications and other materials approved by, and any conditions imposed by, the Design Reviewer, or has not been completed within one year after commencement accomplished as promptly and diligently as possible, then the Design Reviewer shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within 60 days after the Design Reviewer receives a Notice of Completion from the Applicant. The notice shall specify



the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance. The findings of the Design Reviewer shall be final, conclusive and binding on all interested parties, and shall not be subject to appeal to the Board of Directors or to judicial review, so long as they are made in good faith and in accordance with the procedures required by the Association Documents and, if the decision was made by a Design Review Board, the rules and regulations of such Design Review Board.

9.11 Failure of Design Reviewer to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Design Reviewer fails to notify the Applicant of any noncompliance within 60 days after receipt by the Design Reviewer of written Notice of Completion from the Applicant, the Improvement shall be deemed in compliance if the Improvement was, in fact, completed as of the date of Notice of Completion.

9.12 Correction of Noncompliance. If the Design Reviewer gives an Applicant a notice of noncompliance, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the notice. If the Applicant does not remove the noncompliance within the time period required by this Section 9.12, the Design Reviewer or Declarant shall have the rights and remedies set forth in Section 9.13 below, in addition to all other rights and remedies it may have under this Community Charter, at law or in equity.

9.13 Enforcement of Restrictions.

(a) Enforcement Person. The Design Reviewer shall have primary responsibility to enforce the provisions and restrictions set forth in this Article 9 and the Design Guidelines; provided, however, that such responsibility shall not limit the right of Declarant or the Association to take action under any provision of this Community Charter. If the Design Reviewer does not take action to enforce such restrictions within fifteen days after being requested to do so by the Declarant or the Board of Directors, the Declarant (if the Design Reviewer was not the Design Review Board) or the Association (if the Design Reviewer was the Design Review Board) may assume responsibility for enforcing such restrictions in any case in which the Design Reviewer declines to act.

(b) Rights and Remedies. If an Applicant or an Owner violates any term or condition set forth in this Article 9 or in the Design Guidelines, the Design Reviewer and the Association and, during the Development and Sale Period, Declarant, shall have the following rights and remedies:

(i) The right, at its option, to record a notice of noncompliance against the real property on which the noncompliance exists.

(ii) The right, by written notice to the Applicant, to revoke any approval previously granted to the Applicant, in which event the Applicant shall, upon receipt of such notice, immediately cease any development, improvement, alteration, landscaping or other activity covered by the approval so revoked.

(iii) The right to enter upon the real property upon which the violation exists and remove the noncomplying Improvement or otherwise cure such violation, at the Applicant's



sole cost and expense and the Applicant shall reimburse the Design Reviewer, Declarant or the Association, as the case may be, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Design Reviewer, Declarant or the Association, as the case may be, the Board of Directors may levy a Specific Assessment against the Owner of the Lot or other real property for such costs and expenses, and the Owner shall pay the Specific Assessment to the Association within thirty days after the Owner receives a written invoice therefor. If such expenses are owed to the Design Reviewer or Declarant, the Board of Directors shall, at the request of the Design Reviewer or the Declarant, levy a Specific Assessment against the Owner of the Lot or other property for such costs and expenses, and the Association shall pay such costs and expenses to the Design Reviewer or Declarant, as the case may be.

(iv) The right to sue the Applicant to enjoin such violation, or to require specific performance of an Owner's obligations.

(v) The right to sue the Applicant for all damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the Design Reviewer, Declarant or the Association as a result of the violation.

(vi) All other rights and remedies available to it under this Community Charter, at law, or in equity.

The Person with enforcement authority is not obligated to exercise any right or remedy or any particular right or remedy or to exercise its rights and remedies in any particular order. All rights and remedies shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. No action or failure to act with respect to any violation shall constitute a waiver or estoppel with respect to any future similar or dissimilar violation. Nothing in this Section 9.13 is intended to or does limit the rights of Declarant or any other Owner to pursue an action against another Owner to enforce any legal rights or remedies available to Declarant or such Owner as a result of losses or damage arising out of another Owner's failure to satisfy his obligations under this Community Charter or the Design Guidelines.

9.14 Variances. The Design Reviewer may authorize variances from compliance with any of the provisions of the Design Guidelines and any procedures set forth in this Article 9 or the Design Guidelines when it determines that circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations justify such a variance; however, the Design Reviewer shall under no circumstances be obligated to grant variances. No variance shall: (i) be effective unless in writing; (ii) be contrary to this Community Charter or be deemed to have waived any of the provisions of this Community Charter or the Design Guidelines for any purpose except as to the particular property and particular provisions of this Article 9 or the Design Guidelines covered by the particular variance; (iii) prevent the Design Reviewer from denying a variance in other circumstances, whether or not similar; or (iv) limit or affect in any way the Applicant's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction. A variance requires Declarant's written consent during the Development



and Sale Period and, thereafter, requires the Board of Director's written consent. During the Development and Sale Period, if the Design Reviewer is Declarant or is appointed by Declarant, the Board of Directors may not overrule a decision of the Design Reviewer to grant or deny a variance.

9.15 Compensation. The Design Reviewer (including members of the Design Review Board, if any) shall receive reimbursement from: (a) the Declarant if the Design Reviewer was appointed by the Declarant; or (b) the Association if the Design Reviewer was not appointed by the Declarant, for out-of-pocket expenses incurred by it in the performance of its duties hereunder. If the Design Reviewer was appointed by the Declarant, the Design Reviewer may receive compensation from Declarant for the performance of such duties, but if and only if such compensation is approved by Declarant. Declarant has no duty to approve any compensation for the Design Reviewer. If the Design Reviewer was not appointed by Declarant, the Design Reviewer (including members of the Design Review Board) may receive compensation from the Association for the performance of such duties, but if and only if such compensation is approved by the Board of Directors. The Board of Directors has no duty to approve any compensation for the Design Reviewer.

9.16 Certificate of Compliance. Any Owner may request in writing that the Association issue a certificate of compliance certifying that there are no known violations of this Article 9 or the Design Guidelines with regard to the Owner's Lot or other property. The Association, after confirming the necessary facts with the Design Reviewer, shall either grant or deny such written request within thirty (30) days after receipt and may charge a reasonable administrative fee. Any Person, without actual notice to the contrary, shall be entitled to rely on such certificate with respect to all matters set forth therein. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any violation of this Article 9 or the Design Guidelines with regard to the Owner's Lot or other property known to the Association on the date of such certificate.

9.17 Limitation of Liability.

(a) No Duty Created. This Article 9 establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Brown Ranch. This Article 9 and any standards and procedures established pursuant to this Article 9 do not create any duty to any Person. Review and approval of any application may be based purely on aesthetic considerations. The Design Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners, none of which may be the case.

(b) No Liability. There shall be no liability imposed on the Design Reviewer, any Design Review Board, any member of the Design Review Board, any Design Review Board Representative, the Association, the Board of Directors, the officers of the Association, Declarant or any employee or designee of Declarant, or any Person to whom Declarant delegates any rights or duties pursuant to this Article 9, for any loss, damage or injury arising out of or in any way connected with the performance of any duties of such Person or entity unless due to the



willful misconduct or bad faith of the party to be held liable. Without limiting the generality of the previous sentence, the Design Reviewer, any Design Review Board, any member of the Design Review Board, any Design Review Board Representative, the Association, the Board of Directors, the officers of the Association, Declarant and any employee or designee of Declarant shall not be liable for: (i) soil conditions, drainage, or other general site conditions or site work; (ii) any defects in plans or specifications revised or approved under this Article 9; (iii) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a Participating Builder; or (iv) any injury, damages or loss arising out of the manner or quality or other circumstances of approved construction on or modification to any Improvement. In all matters subject to this Article 9, the Association shall defend and indemnify the Design Reviewer, any Design Review Board, any member of the Design Review Board, any Design Review Board Representative, the Board of Directors, the officers of the Association, Declarant and any employee or designee of Declarant, in the manner provided in the Bylaws with respect to indemnification of Directors.

9.18 Construction Period Exception. During the course of actual construction of any permitted Improvement, and provided construction is proceeding with due diligence, enforcement of the provisions of this Community Charter and the Design Guidelines shall be temporarily suspended as to the property upon which the construction is taking place to the extent necessary to permit such construction in accordance with the approval of the Design Reviewer, any plans and specifications submitted to the Design Reviewer and any deadlines for commencement and/or completion of construction required by this Article 9, the Design Guidelines and/or the approval of the Design Reviewer; provided that, during the course of any such construction, nothing is done that will result in a violation of any of the provisions of this Community Charter upon completion of construction and nothing is done that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

9.19 No Restriction upon Declarant. Notwithstanding any provision to the contrary contained in this Article 9 or elsewhere in this Community Charter, Declarant shall be exempt from the limitations, prohibitions and requirements contained in this Article 9, but this provision shall not in any way limit, restrict or abrogate Declarant's rights and authority under this Article 9.

ARTICLE 10 COVENANTS, CONDITIONS AND RESTRICTIONS

10.1 Applicability of Covenants, Conditions and Restrictions. Except as otherwise provided herein, the covenants, conditions and restrictions set forth in this Article 10 shall apply to all Lots and the Owners thereof.

10.2 Use of Lots.

(a) A Lot may be used only for the construction and occupancy of one single-family detached dwelling, or where permitted by the zoning applicable to a Lot and so designated on the subdivision plat, single-family attached dwellings, and typical appurtenances thereto (such as garages, decks, patios, driveways and landscaping). No Improvement on any Lot may be used



in any manner that is inconsistent with the approved zoning thereof or the approvals granted pursuant to this Community Charter or applicable law.

(b) No gainful occupation, profession, trade or other nonresidential use, other than the keeping of a home office that is not open to the general public and is not used for meetings with clients or customers, shall be conducted on a Lot, without the prior written consent of the Board of Directors.

(c) All residential improvements shall be located within the building envelopes, if any, designated for the Lots on the applicable subdivision plats, except driveways and other improvements approved by the Design Review Board and complying with the requirements of Montrose County.

10.3 Design Control. Except as expressly provided to the contrary in this Community Charter, no Improvement shall be made or done without the prior written consent of the Design Review Board, and no changes or deviations in or from the plans and specifications consented to by the Design Review Board shall be made without the prior written consent of the Design Review Board. The Design Review Board may establish minimum and maximum square footage requirements with respect to dwelling units and other improvements on the Lots. The approval rights of the Design Review Board extend to aesthetic considerations as well as issues of design consistency and quality.

10.4 Landscaping.

(a) Each Purchaser of a Lot and each Participating Builder shall ensure that the grading and landscaping of such Purchaser's or Participating Builder's Lot is completed in accordance with plans approved by the Design Review Board and in accordance with the standards set forth in the Design Guidelines. In addition, a Participating Builder shall be responsible for installation of front-yard landscaping prior to initial occupancy of a residence constructed by such Participating Builder, unless the residence is first occupied during the period between October 1 and April 30, in which event completion of landscape installation may be delayed until June 1 next succeeding. On corner lots, side yard areas adjacent to a public street shall be landscaped by the Participating Builder at the same time as the front yard. With respect to each Lot which adjoins a public right-of-way, the Participating Builder shall install landscaping in the portions of the adjoining public right-of-way that are designated (by the government authority having jurisdiction) for landscaping, at the time the Participating Builder first installs landscaping on such Lot. With respect to Lots which adjoin common greenbelt areas, or public park areas, the Participating Builder as to such Lot shall install side and/or rear yard landscaping, or both (i.e., landscaping of the yard area which so adjoins), at the same time as the front yard landscaping is installed. With respect to a Lot which does not adjoin common greenbelt areas or public park areas, side and rear yard landscaping shall be installed within 9 months after initial occupancy of a residence on such Lot by an Owner. A Participating Builder may delegate its obligations to install landscaping set forth in this Section 10.4 to a Homebuyer, provided that such Homebuyer shall assume such obligations in a written instrument signed by such Homebuyer and the Participating Builder shall furnish a copy of such signed assumption instrument to Declarant. However, such delegation shall not release the Participating Builder from its obligations to cause such landscaping to be installed as set forth in this Section 10.4.



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10.5 Animals.

(a) No animal of any kind shall be raised, bred or kept on any Lot, except that domestic dogs, cats and other household pets permitted by the Association may be kept on a Lot, so long as they are kept in accordance with this Community Charter and all other Association Documents and do not exceed a reasonable number (as determined by the Board of Directors).

(b) No Owner shall allow any animal owned or controlled by such Owner to roam within the Brown Ranch unattended. At all times, dogs, cats and other household pets shall either be (i) confined within the Owner's Lot, or (ii) on a leash and under the direct control and supervision of their Owners. An Owner shall be responsible for immediately removing any excrement left anywhere in the Brown Ranch by any animal owned or controlled by such Owner, and if an Owner fails to do so, the Association may provide, by notice, that such Owner is not permitted to keep any animal on the Property.

(c) No animal may be kept on the Property if that animal unreasonably interferes with the rights, comforts and convenience of other Owners, as reasonably determined by the Association (including without limitation, due to barking or other noise). The Association may adopt Rules and Regulations regarding the ownership and control of animals within the Brown Ranch.

10.6 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage, barn or temporary buildings or structures of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction dwellings on Lots are subject to prior review and approval of the Design Review Board, and shall be removed immediately after the completion of construction. Temporary sales facilities may be used by a Participating Builder during the period of construction of model homes within the Brown Ranch, subject to prior review and approval of such temporary facility by the Design Review Board. Any such temporary sales facility shall be removed immediately after opening of a model home by such Participating Builder.

10.7 Nuisances; Unsightliness; Construction Activities.

(a) No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no offensive or noxious odors, excessive glare or unreasonably bright exterior lighting or loud or offensive noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot or to the occupants of such other Lot, or to disturb the peace and enjoyment of other Owners. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or to its occupants.

(b) No lawn statuary or other decorative or functional exterior improvements shall be permitted, unless approved by the Design Review Board (which may prohibit or require screening of such items in its discretion). Without limiting the generality of the foregoing, no clothing or household fabrics or other articles may be hung, dried or aired on any Lot or Common Area in a place or manner that is visible from any other Lot, Common Area or public right-of-way or open space.



(c) Normal construction activities and parking in connection with the building of Improvements on a Lot or in connection with the Declarant's building of Improvements in the Common Areas or Declarant's other customary development activities shall not be considered a nuisance or otherwise prohibited by this Community Charter (subject to the design review provisions hereof).

10.8 Hazardous Activities. No activity shall be conducted within the planned community created hereby which is or might be hazardous to any Person or property. Without limiting the generality of the foregoing, (a) no firearms shall be discharged within the Property, and (b) no open fires shall be lighted within Property, except in a contained fireplace or barbecue unit which is attended and is designed to prevent the dispersal of burning embers. Normal construction activities shall not be considered hazardous for the purpose of this Section 10.8.

10.9 Trash Removal; Utilities.

(a) If the Association establishes, retains or otherwise provides trash removal services within the Brown Ranch, all Owners shall be obligated to use such trash removal services and to comply with such Rules and Regulations as the Association may adopt in that regard.

(b) All electric, gas, water, television, radio, telephone and other utility installations and connections from the boundary of a Lot to improvements located on such Lot shall be placed underground, unless otherwise approved by the Design Review Board. All cooling and heating apparatus shall be concealed or placed on the ground immediately adjacent to a dwelling. No exterior roof-mounted or side-mounted evaporative cooling, swamp cooling or air conditioning units shall be installed on any dwelling, unless the Design Review Board determines in its sole discretion that such units can be installed in an aesthetically pleasing manner. Notwithstanding the foregoing, any existing utility lines that are located above-ground as of the date of this Community Charter are permitted.

10.10 Maintenance of Improvements. No buildings or other Improvements on any Lot shall be permitted to fall into disrepair and each such building or other improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. If any building or other Improvement is damaged or destroyed, then, subject to the approvals required from the Design Review Board, such building or other Improvement shall be immediately repaired or rebuilt or demolished. If any such building or improvement is demolished, the Owner of the Lot on which such building or Improvement was located shall promptly install and thereafter maintain approved landscaping (in accordance with plans approved by the Design Review Board) on the portion of the Lot on which such building or improvement was located.

10.11 Mineral Exploration; Private Water and Sewer Systems.

(a) No Lot or Common Area shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

(b) No private wells, septic fields, private septic systems, cesspools or septic tanks shall be permitted on the Property or any portion thereof, without the prior written approval of the Design Review Board (which may be withheld in its sole discretion).



10.12 Exterior Mechanical Equipment. No exterior mechanical equipment shall be erected on any Lot without the specific written approval of the Design Review Board. Notwithstanding the foregoing, the Design Review Board may restrict the erection or installation of any satellite dish with a diameter of less than one meter or any other exterior radio or television antenna only to the extent permitted by law. All exterior mechanical equipment shall be incorporated as an integral part of the architectural character of any building erected.

10.13 Signs. No signs whatsoever shall be erected or maintained on any Lot except (a) signs required by legal proceedings; (b) signs erected or approved in writing by the Declarant, and (c) such other signs as may have been approved in advance and in writing by the Design Review Board, or that comply with the requirements established by the Design Review Board in the sign policy, sign guidelines or sign regulations, if any, adopted by the Design Review Board from time to time.

10.14 Trash Containers; Mailboxes.

(a) No garbage or trash shall be placed or kept on any Lot, except in covered containers. No such trash containers shall be kept on any Lot in a manner such that they are visible from any other Lot, except on trash collection days. Dumpsters used in conjunction with construction activities on Lots shall be subject to special rules adopted by the Design Review Board. The Association may adopt Rules and Regulations regarding trash storage, collection and removal, and may require the use of uniform trash containers.

(b) The Association may require the use of uniform mailboxes and may designate central locations for mail pick-up and delivery.

10.15 Compliance with Laws. Nothing shall be done or kept on a Lot in violation of any law, ordinance, rule or regulation of any governmental authority.

10.16 Compliance with Insurance Requirements. Except as may be approved in writing by the Association, nothing shall be done or kept on any Lot which may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Association.

10.17 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any street, trail or other pedestrian way from ground level to a height of eight feet without the prior consent of the Design Review Board.

10.18 Restriction on Subdivision, Covenants, Rezoning and Timeshare. No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner, without the prior written consent of the Association, which consent must be evidenced on the plat or other instrument creating the subdivision. No further covenants, conditions or restrictions shall be recorded by any Owner or other Person, except Declarant, against any Lot without the Association's prior written consent, and, during the Development and Sale Period, Declarant's prior written consent and any covenants, conditions or restrictions recorded by any Person other than Declarant without such consent evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Association and the proposed use



otherwise complies with this Community Charter and all other Association Documents. No Owner may submit a Lot to a timeshare or similar arrangement.

10.19 Leases. The Association may, in the Rules and Regulations, prohibit or impose restrictions upon the short-term leasing of all or any part of an Owner's Lot (meaning any lease having a term of less than six months).

10.20 Recreational and Commercial Vehicles; Vehicle Repair.

(a) Other than lawful operation on public streets and rights-of-way or private driveways, no motorbike, motorcycle, snowmobile, golf cart, moped, three-wheeler or other motorized vehicle may be operated on the Property. No commercial vehicle, house trailer, camper, camping trailer, motor home, horse trailer, boat, hauling trailer of any nature, truck larger than 3/4 ton, self-contained recreational vehicle (commonly referred to as an "RV"), snowmobile, jet-ski, motocross motorcycle, three-wheeler or other recreational equipment or vehicle or associated accessory shall be parked on any portion of the Property for longer than 48 hours in any two-week period, other than in a covered, enclosed structure approved by the Design Review Board.

(b) No vehicle maintenance or repair (including without limitation, changing of oil) shall be conducted on the Property (other than in cases of emergency, such as changing of a flat tire occurring on the Property), unless conducted in compliance with all applicable laws within an enclosed garage or other structure.

10.21 Declarant's Exemption. Nothing contained in this Community Charter or any other Association Document shall be construed to prevent (a) the exercise by Declarant of any Special Declarant Rights; or (b) the erection or maintenance by Declarant or its duly authorized agents or Participating Builders, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within the Brown Ranch.

10.22 Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board of Directors, in its sole discretion, to be nuisances or to adversely affect the health, safety or welfare of Owners or the value of property within the planned community created hereby, the Board of Directors may (but is not obligated to) adopt Rules and Regulations restricting or regulating the same.

10.23 Final Development Plans and Subdivision Plats. The Property is subject to all restrictions and covenants imposed by all final development plans for the Brown Ranch and all subdivision plats for the Property now or hereafter recorded in the real property records of Montrose County, Colorado, as the same may be amended or supplemented from time to time. Declarant reserves the right to amend and modify the final development plans for all or any portion of the Property and to replat any portions of the Property owned by Declarant from time to time. No assurance is provided that the any final development plan and subdivision plat will remain in effect.

10.24 Compliance With Covenants, Conditions and Restrictions. Each Owner shall comply with all of the terms, provisions, covenants, conditions, restrictions, easements and reservations on the Owner's part to be complied with under this Community Charter or any other Association

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Document, or under the documents governing any Subassociation applicable to such Owner's Lot.

10.25 Participating Builders. No Person other than a Participating Builder, an Owner who is not in the business of constructing and selling homes, or Declarant may construct Improvements on the Property, unless otherwise approved by Declarant (during the Development and Sale Period) and the Design Review Board. Status as a Participating Builder may be revoked by the Declarant at any time that a Participating Builder is in violation of any Association Document, and may be permanently revoked for repeated violations of the Association Documents.

ARTICLE 11 EASEMENTS AND RESERVATIONS

11.1 Declarant's Easements.

(a) Declarant hereby reserves for itself, its successors and assigns an easement over, across, through and under each Lot (excluding any residential structure now or hereafter constructed on such Lot) and the Common Areas to (i) discharge Declarant's obligations under this Community Charter; (ii) exercise any of Declarant's rights under this Community Charter; and (iii) make improvements within the Brown Ranch or any other real estate now or hereafter owned by Declarant or an affiliate of Declarant (including, without limitation, the Expansion Property).

(b) Declarant hereby reserves to itself, its successors and assigns, the right to (i) grant or otherwise establish from time to time utility and other easements, rights-of-way, permits or licenses over, across, through and under the Common Areas; (ii) specify the terms to govern any easements or rights conveyed by Declarant; and (iii) create other reservations, exceptions and exclusions that Declarant deems appropriate.

11.2 Owners' Easements Over Common Areas. Subject to the terms and conditions of this Community Charter and all other Association Documents, Declarant hereby grants to the Owners an easement over, across and through the Common Areas (a) for ingress and egress to their Lots, and (b) to use and enjoy the Common Areas. An Owner's ability to use and enjoy the Common Areas is subject to the regulatory, enforcement and other powers of the Association, and may be denied upon any uncured default by such Owner under the Association Documents. Without limiting the generality of the foregoing, the Association may assess charges for use of the Common Areas, and establish permitted times and manners of use thereof as well as rules and regulations governing use of the Common Areas. NO OWNER SHOULD ASSUME BY REASON OF THE PROXIMITY OF SUCH OWNER'S LOT TO ANY AMENITY OR FACILITY THAT SUCH OWNER WILL HAVE RIGHTS TO USE AND ENJOY SUCH AMENITY OR FACILITY, AND EACH PURCHASER SHOULD CAREFULLY INVESTIGATE WHAT COMMON AREAS AND LIMITED COMMON AREAS MAY BE USED AND ENJOYED AS A RESULT OF OWNING A PARTICULAR LOT.

11.3 Utility Easement. There is hereby created a blanket easement over, across, through and under those portions of the Lots which are within applicable building setbacks for such Lots, which easement may be used for the installation, replacement, repair and maintenance of, all



utility and service lines and systems, including, without limitation, water, sanitary sewer, storm drainage, gas, telephone, electricity and cable television. Declarant or the Association may authorize the release of portions of the easement created by this Section 11.3 upon the request of any Owner showing good cause therefor. Notwithstanding anything to the contrary contained in this Section 11.3, no electrical lines, water lines, telephone lines or other utility or service lines may be installed or relocated on any portion of the Property, except by Declarant so long as Declarant has any interest in the Property or the Expansion Property, by a Participating Builder or as otherwise approved by Declarant or the Design Review Board.

11.4 Association's Easements. Declarant hereby grants the Association an easement over, across, through and under each Common Area and each Lot (excluding entry into any residential structure now or hereafter constructed on such Lot) to (a) exercise any right held by the Association under this Community Charter or any other Association Document, and (b) perform any obligation imposed upon the Association by this Community Charter or any other Association Document. Notwithstanding the foregoing, the Association shall not enter upon any Lot without reasonable prior notice to the Owner of the Lot, except in cases of emergency.

11.5 Recorded Easements. The Property shall be subject to all easements of record or of use as of the date of Recordation of this Community Charter, as well as easements in favor of all fire departments, law enforcement agencies, ambulances and governmental authorities who enter the Property in the performance of their duties.

ARTICLE 12 INSURANCE

12.1 Insurance Required to be Obtained by the Association.

(a) The Association shall obtain and maintain in full force and effect at all times, to the extent reasonably obtainable:

(i) casualty, fire and extended coverage insurance with respect to all insurable improvements to real property owned by the Association, if any, including coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake and war risk. Casualty, fire and extended coverage insurance with respect to insurable property shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association as the trustee and attorney-in-fact for the Members, and in the event of damage or destruction to any insured improvements, the proceeds of such insurance shall be applied by the Association, to the extent necessary, to cause the damaged or destroyed improvements to be restored or replaced to its original condition.

(ii) commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas, in an amount deemed appropriate in the judgment of Board of Directors, insuring the Association, the Board of Directors, the management agent of the Association, if any, and their respective employees, agents, and all persons acting as agents. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence,



use, or management of the Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties.

(iii) a fidelity bond for any Person handling funds of the Association, in such amounts and upon such terms as the Board of Directors determines is appropriate from time to time.

(iv) The Association may also obtain and maintain in full force and effect any additional insurance that the Board of Directors deems necessary or that is required by law.

(b) To the extent reasonably possible without undue cost, the insurance maintained by the Association shall contain a waiver of rights of subrogation as against the Association, each Owner and any Person claiming by, through or under such Owner and as against any officer, director, agent or employee of any of the foregoing, and shall cover each Owner without each such Owner being specifically named.

(c) Except as provided in the following sentence, all insurance premiums paid by the Association shall be Common Expenses. Upon request of Declarant, and subject to Declarant's payment to the Association of any additional premium attributable thereto, the insurance maintained by the Association shall name Declarant as an additional insured and shall contain a waiver of rights of subrogation against Declarant, to the extent reasonably possible and permitted by law.

(d) Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate, as determined from time to time by the Board of Directors. Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Directors to ascertain whether coverage under the policies is sufficient in light of the possible or potential liabilities of the Association. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the insurable improvements and property of Declarant.

(e) If any Agency holds any Mortgage on a Lot, then the Association shall obtain and maintain during the term of such Mortgage such insurance and bonds as may be required by the Agency, unless such insurance or bond is not available or has been waived in writing by such Agency.

12.2 Adjustments.

Any loss covered by insurance maintained by the Association shall be adjusted with the Association. The insurance proceeds payable for any such loss shall be paid in accordance with the terms and provisions of Section 12.1 above.

ARTICLE 13 CASUALTY

13.1 Casualty to Common Areas. The Association shall respond to any damage to, or destruction of, any Common Areas in accordance with the terms and provisions of Section 12.1(a)(i) above.



13.2 Casualty to a Lot. Each Owner shall be responsible for repairing or replacing any damage to, or destruction of, such Owner's Lot. If any building or other Improvement is damaged or destroyed, then, subject to the approvals required from the Design Review Board, such building or other Improvement shall be immediately repaired or rebuilt or demolished. If any such building or improvement is demolished, the Owner of the Lot on which such building or Improvement was located shall promptly landscape the portion of the Lot on which such building or improvement was located in accordance with plans approved by the Design Review Board. No hazardous conditions or damaged Improvements shall be permitted to remain in such state on any Lot.

ARTICLE 14 CONDEMNATION

14.1 Condemnation of the Brown Ranch. If all of the Brown Ranch is taken by condemnation or similar proceeding, the master planned community and this Community Charter shall terminate as of the date of the taking, and any condemnation award payable for any Common Area in connection therewith shall be paid to the Association and shall be disbursed as provided in this Section 14.1. The condemnation award must be distributed to Owners and Mortgagees as their interests may appear, in accordance with the following provisions. Upon termination of this Community Charter, creditors of the Association who obtain a lien and duly record it in every county in which any portion of the Brown Ranch is located are to be treated as if they had perfected liens on the Lots immediately before termination or when the lien is obtained and recorded, whichever is later. Except as provided below in this Section, the respective interests of Owners are the combined fair market values of their Lots, allocated interests, any Limited Common Areas, and any tenant in common interest, if any, immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within thirty days after distribution by Owners of Lots to which 25% or more of the votes in the Association are allocated. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Lot and its allocated interests by the total fair market values of all the Lots and their allocated interests.

14.2 Condemnation of Fewer than all Lots. If one or more Lots, but fewer than all Lots, are taken by condemnation or similar proceeding, (a) any condemnation award payable in connection therewith shall be paid, and (b) the Shares of Common Expenses allocated to those Lots shall be reallocated, in accordance with the terms and conditions of Section 38-33.3-107 of the Act.

14.3 Condemnation of Common Areas. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board of Directors acting on the written direction of Voting Delegates representing at least 67% of the total votes in the Association and, during the Development and Sale Period, the written consent of Declarant) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:



If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Voting Delegates representing at least 67% of the total votes of the Association and, during the Development and Sale Period, Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors. The provisions of Section 13.1 regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore any improvements on the Common Area, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

ARTICLE 15 SPECIAL DECLARANT RIGHTS

15.1 Improvements. Declarant hereby reserves for itself, its successors and assigns the right to construct any Improvements contemplated or permitted by any preliminary development plan or final development plan or any subdivision plat for the Property, the Expansion Property or the Brown Ranch (in each case, as amended and supplemented from time to time), and the right to construct any Improvement that Declarant deems necessary or advisable on any Common Area or any Lot owned by Declarant, including, without limitation, trails, drainage facilities, utility facilities, water tanks, monuments and recreational facilities. Such construction shall not be subject to design review and approval as herein provided.

15.2 Development Rights.

(a) Declarant hereby reserves for itself, its successors and assigns:

(i) the right to amend this Community Charter to add, at any time and from time to time, all or any part of the Expansion Property and/ or any other real property selected by Declarant;

(ii) the right to amend this Community Charter to create up to 1,800 Lots, and additional Common Areas on all or any portion of any other real estate that Declarant may add to the planned community pursuant to subparagraph 15.2(a)(i) above (including without limitation, the right to designate recreational amenities hereafter developed as Limited Common Areas for the benefit of only certain designated Lots, whether now existing or hereafter created);

(iii) the right to subdivide any Lot owned by Declarant;

(iv) the right to convert any Lot owned by Declarant into Common Areas; and

(v) the right to withdraw from the planned community any real estate owned by Declarant prior to the conveyance of a Lot to a Purchaser and, after the addition of any platted blocks or Tracts or any other real property to the planned community, the right to withdraw any real estate owned by Declarant and located within such block, Tract or other real property at any



time prior to the conveyance to a Purchaser of a Lot located in such block, Tract or other real property to a Purchaser.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Community Charter, which may be in the form of a Charter Supplement.

15.3 Sales Offices, Construction Offices and Model Homes. Declarant hereby reserves for itself, its successors and assigns, including any Participating Builder, the right to construct and maintain sales offices, construction offices, management offices and model homes on Lots owned by Declarant or any Participating Builder and on any Common Area selected by Declarant from time to time. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Brown Ranch on any and all Common Areas or any Lot. Without limiting the generality of the foregoing, Declarant hereby reserves for itself, its successors and assigns, the right to maintain a sales office in any facility that may at any time be constructed and comprise part of the Common Areas or the Property in such manner and for such period of time as Declarant may determine in its sole and absolute discretion, even if such use constitutes the sole and exclusive use of such facility. If Declarant uses all or any portion of a facility located on a Common Areas for marketing and sales purposes, then such facility or the portion thereof exclusively used by Declarant shall not constitute a Common Areas, and the Owners shall have no rights with respect thereto, until such time as Declarant ceases such use.

15.4 Exercising Special Declarant Rights. Declarant may exercise its Special Declarant Rights at any time and from time to time prior to the earlier of: (a) the date that is 50 years after the date of recording of this Community Charter, and (b) the date on which the certificate of occupancy is issued for the last Lot that may be created pursuant to this Community Charter. The consent or approval of the Association or the Owners shall not be required in connection with Declarant's exercise of its rights under this Article 15, or any other right reserved to Declarant under the Association Documents. Declarant may exercise its Special Declarant Rights any number of times and in any order and no assurance is given as to the timing of such exercise or the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise the Special Declarant Right with respect to any other portion of the Property. Declarant has no obligation to exercise any Special Declarant Right, and makes no assurance that any such right will be exercised.

ARTICLE 16 ENFORCEMENT AND REMEDIES

16.1 Enforcement.

(a) Each provision of this Community Charter with respect to the Association or the Common Areas shall be enforceable by Declarant or any Owner by a proceeding for injunctive relief or specific performance.

(b) Each provision of this Community Charter with respect to an Owner or a Lot shall be enforceable by the Association or Declarant by (i) a proceeding for injunctive relief or

specific performance; (ii) a suit or action to recover damages; and/or (iii) in the discretion of the Association, after Notice and Opportunity to be Heard, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and such Owner's family members, tenants and guests from the use of any Common Areas and from the participation in any Association affairs (including, without limitation, any suspension of voting rights). In addition, if an Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Community Charter or any other Association Document, the Association shall have the following rights and remedies:

(i) The Association may, but is not obligated to, after Notice and Opportunity to be Heard, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association as a Specific Assessment the amount of all costs incurred by the Association in connection therewith within thirty days after the Owner receives a written invoice therefor from the Association.

(ii) The Association may, after Notice and Opportunity to be Heard, fine the Owner in an amount determined by the Association or pursuant to a schedule adopted by the Association from time to time. Incremental fines for repeat violations shall be permitted. The Owner shall pay any such fine to the Association, as a Specific Assessment, within thirty days after the Owner receives a written invoice therefor from the Association.

(iii) The Association shall have all other rights and remedies available to it under this Community Charter, at law or in equity.

(c) All rights and remedies of Declarant and the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The failure of Declarant or the Association to enforce any provision of this Community Charter in any circumstance or at any time shall not be a waiver of its right to enforce such provision or any other provision of this Community Charter in the particular circumstance or in any other circumstance (whether similar or dissimilar) or at any time.

16.2 Attorneys' Fees. In the event of any dispute under or with respect to this Community Charter or any other Association Document, the prevailing party (as to liability, without regard to any monetary award) shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including, but not limited to, reasonable attorneys' fees and disbursements.

16.3 Interest. If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of 18 percent per annum, or five points above the prime rate then published in the Wall Street Journal, whichever is higher, from the due date of such unpaid amount until the date paid, or such other reasonable rate as the Board of Directors may establish within legal limits from time to time. If such interest is subject to any applicable law concerning usury, the rate of interest specified above shall never exceed the maximum rate permitted by applicable law and if necessary to comply with such law, such rate shall be deemed automatically reduced to the maximum rate permitted by such law.



ARTICLE 17 TERM AND AMENDMENTS

17.1 Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Community Charter shall run with and bind the Property until this Community Charter is terminated pursuant to Section 17.2 below.

17.2 Termination.

(a) The Owners may terminate this Community Charter and the planned community created hereby by a vote of at least 80 percent of the votes allocated to all Memberships. If the necessary votes and consents are obtained, the agreement of the Owners to terminate the planned community and this Community Charter shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners. Upon Recordation of the termination agreement with the Clerk and Recorder for Montrose County, Colorado, the planned community created hereby shall be terminated, this Community Charter (excluding any subdivision plat thereof and final development plan of record) shall have no further force or effect, and the Association shall be dissolved.

(b) Prior to the conveyance of any Lot by Declarant to any Purchaser, the Declarant may terminate this Community Charter and the planned community created hereby by recording a statement of termination to that effect in the real property records of Montrose County, Colorado.

17.3 Amendments by Declarant. During the Development and Sale Period, Declarant may amend any provision of this Community Charter at any time, without the approval or consent of the Association or any Owners or any First Mortgagees, by recording a written instrument, executed by Declarant, setting forth such amendment, except that no such amendment may prohibit or materially restrict the use of any Lot for purposes of a single-family residence, unless such Lot is then owned by Declarant. After the Development and Sale Period, Declarant may amend any provision of this Community Charter at any time, without the approval or consent of the Association or any Owners or any First Mortgagees, by recording a written instrument, executed by Declarant, setting forth such amendment: (i) if such amendment is required by any Agency as a prerequisite to its issuance or guarantee of any Mortgage with respect to any portion of the Property; and (ii) to correct technical errors.

17.4 Amendments by Members. Subject to Sections 17.2 and 17.3 above, the Owners may amend any provision of this Community Charter at any time by a vote of at least 67 percent of all Memberships, provided that during the Development and Sale Period, any such amendment shall require the consent of Declarant. If the necessary votes and consents are obtained, the Association shall cause to be recorded with the Clerk and Recorder for Montrose County, Colorado, an amendment to this Community Charter.

17.5 Mortgagee Protection.

(a) Upon filing a written notice of such First Mortgage with the Association, a First Mortgagee shall be entitled to: (i) written notice from the Association of any default under the Association Documents by the Owner of the Lot subject to such Mortgage, if such default is not



cured within sixty days after the Association learns of it; (ii) cure any such default on behalf of the mortgagor under the First Mortgage, or any failure by the Association to pay taxes or insurance premiums with respect to the Common Areas, during any period when the Owner had the right to cure such default; and (iii) receive written notice of any casualty or condemnation of the Common Areas.

(b) Each First Mortgagee that files written notice of such First Mortgage with the Association shall be entitled to receive prior notice of any of the following actions proposed by the Association or its members, and no such action may be taken unless approved by at least 51% of such First Mortgagees who have provided such notice (based upon one vote for each Lot subject to such First Mortgage):

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Common Area or Improvements thereof that are owned, directly or indirectly, by the Association (other than the granting of easements for purposes consistent with the intended use of such property by the Association and its members);

(ii) amendment of this Community Charter to: (A) change the method for allocating membership interests or votes, or the Share of Common Expenses appurtenant to each Lot, or the method of allocating insurance or condemnation proceeds; or (B) waive or abandon the design review process or restrictive covenants contained in this Community Charter; or

(iii) application of insurance proceeds for losses to Common Areas for other than the repair, replacement or reconstruction of the Improvements that were damaged or destroyed.

If notice is given to an eligible First Mortgagee of any such matter, and such First Mortgagee does not respond within thirty calendar days, then such First Mortgagee shall be deemed to have consented to and approved such matter.

ARTICLE 18 DISCLOSURE

18.1 No Views Guaranteed. There is no guarantee that scenic views will be created or maintained from any Dwelling Unit or any other portion of the Property. Any scenic view existing at any time may be lost as a result of construction of new buildings, structures or other improvements on any portion of the Property or modification of existing buildings, structures or other improvements, or as a result of the growth of trees, plants or other landscaping or as a result of any other cause. By acceptance of a deed to a Dwelling Unit, each Owner, for himself/herself and his/her successors and assigns, hereby releases Declarant, the Association, the Design Review Board and any member, agent and employee of any of the same from any and all liability with respect to or in any manner directly or indirectly arising out of the matters discussed in the foregoing disclosure.

ARTICLE 19
MISCELLANEOUS

19.1 Limited Expense Planned Community. The annual average common expense liability of each Lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, is hereby limited to Four Hundred Dollars (\$400.00), as heretofore and hereafter adjusted for changes in the Consumer Price Index as provided in Section 38-33.3-116 of the Act, or such larger amount as may hereafter be provided in the Act. Accordingly, it is the Declarant's intent to avail itself of the exception contained in Section 38-33.3-116 of the Act for limited expense planned communities, and until such time (if ever) the annual average common expense liability of each Lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, exceeds Four Hundred Dollars (\$400.00), as heretofore and hereafter adjusted for changes in the Consumer Price Index as provided in Section 38-33.3-116 of the Act, or such larger amount as may hereafter be provided in the Act, the Property is subject only to Sections 38-33.3-105, 38-33.3-106, and 38-33.3-107 of the Act.

19.2 Interpretation of the Community Charter. Except for judicial construction, the Association, by its Board of Directors, shall have the exclusive right to construe and interpret the provisions of this Community Charter and, in the absence of manifest error, the Board of Director's interpretation shall be final and binding upon all Owners and all other Persons. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

19.3 Severability. Any determination by any court of competent jurisdiction that any provision of this Community Charter is invalid or unenforceable shall not affect the validity and enforceability of any other provisions hereof.

19.4 Disclaimer of Representations and Limitation of Liability.

(a) Notwithstanding anything to the contrary contained in this Community Charter or any marketing or other materials distributed or published by Declarant or any Participating Builder, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the planned community known as Brown Ranch can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Community Charter, or that any such land, whether or not it has been subjected to this Community Charter, is or will be committed to or developed for a particular use, or that if such land is once used for a particular use, that such use will continue in effect. ANY AND ALL WARRANTIES WITH RESPECT TO ANY PORTION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW (INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY SPECIFICALLY DISCLAIMED. DECLARANT AND THE ASSOCIATION DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSON OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED



TO A LOT, AN OWNER AGREES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED AND MADE MANDATORY IN THIS COMMUNITY CHARTER AND THE ASSOCIATION DOCUMENTS, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY OR THE EXPANSION PROPERTY.

(b) To the greatest extent permitted by applicable law, the Association, its Board of Directors, the Design Review Board and its members, Declarant and any member, agent, employee, officer, director, or representation of any of them shall not be liable to any person or entity for any action or failure to act under this Community Charter if the action or failure to act was in good faith and without malice.

19.5 Reference to Community Charter and Deeds. Deeds to and instruments affecting any Lot or any other part of the Property may contain the provisions set forth herein by reference to this Community Charter, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his or her heirs, executors, administrators, successors and assigns.

19.6 Successors and Assigns of Declarant. Any reference in this Community Charter to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers as provided herein.

19.7 Captions and Titles. All captions and titles of headings of Articles and Sections in this Community Charter are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

19.8 Notices. If notice of any action or proposed action by the Board of Directors or any committee or if any meeting is required to be given to any Owner by law, this Community Charter or any other Association Document, then, unless otherwise specified herein or in any other Association Document, such notice requirement shall be deemed satisfied if such notice of such action or meeting is sent, postage prepaid, to such Person's address (which as to an Owner, shall be the address of such Owner's Lot unless otherwise indicated to the Association in writing), or to the extent permitted by law, published once in any newspaper in general circulation within Montrose County, Colorado. This section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

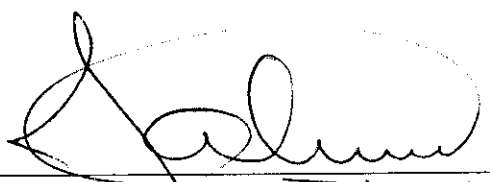
IN WITNESS WHEREOF, Declarant has hereunto caused this Community Charter to be executed as of the day and year first written above.

SUNSHINE OF MONTROSE, INC.,
a Colorado corporation



713205
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12/05/2003 02:27P
C KRUSE, CLK&REC MONTROSE, CO COMCRT R 346.00 D 0.00

By:


Name: John T. Moir
Title: Vice President

STATE OF COLORADO)

COUNTY OF Montrose) ss.

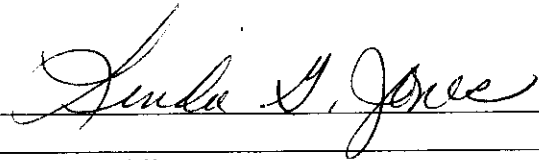
The foregoing instrument was acknowledged before me this 2nd day of December, 2003, by John Moir as Vice President of Sunshine of Montrose, Inc., a Colorado corporation.

Witness my hand and official seal.

SEAL

My commission expires Commission Expires 8-14-2006




Notary Public



713205

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1-40

Open Spaces #1, #2 and #3

Park #1

All located in Brown Ranch Filing #1, Planned Development Parcel No.1

County of Montrose, State of Colorado.

The following portions of the Property are hereby designated a Service Area:

Lots 1-39 PD1, Brown Ranch Filing # 1

The Name for this Service Area is: "Cottonwood Pointe Neighborhood"

The Association shall furnish water for outdoor irrigation purposes to Lots within such Service Area and shall charge the cost of such service to the Owners of the Lots within such Service Area.



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EXHIBIT B

LEGAL DESCRIPTION OF EXPANSION PROPERTY

SECTIONS # 1,2,11 & 12 all in TOWNSHIP 48 NORTH, RANGE 9 WEST, N.M.P.M
MONTROSE COUNTY, COLORADO.

**713205**

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EXHIBIT C

GENERAL COMMON AREAS

The following property within the Brown Ranch, State of Colorado according to the final plat thereof recorded in the real property records of Montrose County, Colorado, on Dec. 5, 2003, at Reception No. 713206:

Open Space #1 and all improvements now or hereafter constructed on Open Space #1,

Open Space #2 and all improvements now or hereafter constructed on Open Space #2,

Open Space #3 and all improvements now or hereafter constructed on Open Space #3,

Park #1 and all improvements now or hereafter constructed on Park #1,

Lot # 40 and all improvements now or hereafter constructed on Lot # 40 and

Any underdrain system now or hereafter constructed within public rights-of-way or Open Spaces, Parks and Lot # 40 within The Brown Ranch, pursuant to water and sewer plans now or hereafter approved by the City of Montrose (and expressly excluding any underdrain now or hereafter constructed on any single-family Lot within the Brown Ranch).