

STATE OF COLORADO

COUNTY OF ROUTT

Indexing Note: Please index in grantee's index under "Marabou" and "Marabou Owners Association, Inc." and in grantor's index under "Elk River Partners LLC"

COMMUNITY CHARTER

FOR

MARABOU



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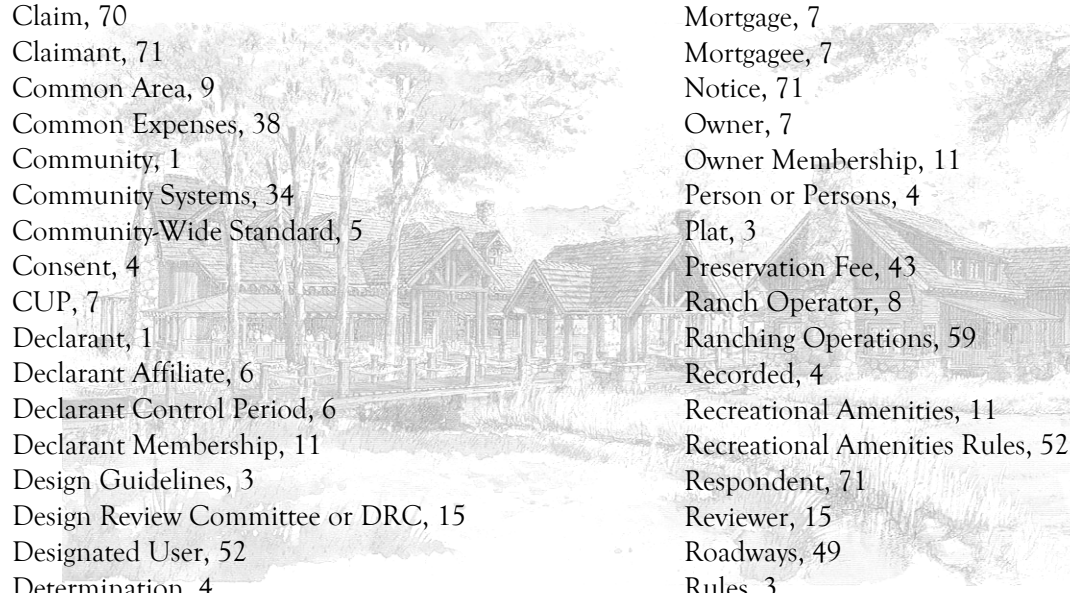


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COMMUNITY CHARTER FOR MARABOU

PREAMBLE

This Community Charter for Marabou ("Charter") establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of various residential properties and common areas within Marabou, a master planned community located near Steamboat Springs, Colorado in Routt County, Colorado ("Marabou"). The Marabou master plan contemplates the integration of a residential component, a network of streets and trails, open spaces, and natural features to enhance the overall quality of life for owners and occupants. An integral part of the development plan is the formation of Marabou Owners Association, Inc., a Colorado nonprofit corporation (the "Association"), to own real property within Marabou and to operate and/or maintain various common areas and community improvements and to administer and enforce this Charter and the other Governing Documents referenced in this Charter.

MISSION STATEMENT

The Declarant's mission for Marabou is to create a community that preserves the ranching and agricultural traditions and the rich, colorful history of the American West. It seeks to establish a legacy of happy, enriching daily life, sustainable harmony within its surroundings, and regional environmental leadership. Moreover, it seeks to protect and preserve this rugged and beautiful place, so that it might endure for generations to come.

DECLARATION

Elk River Partners LLC, a Georgia limited liability company, its successors and assigns (the "**Declarant**"), declares that the property described in Exhibit "A" and any additional property made subject to this Charter by supplement or amendment, shall constitute the "**Community**" of Marabou referred to in this Charter. This Charter shall encumber the title to such property, shall govern the development and use of such property, and shall be binding upon the Declarant and the future owners of any portion of such property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of such property. This Charter shall also be binding upon the Association.

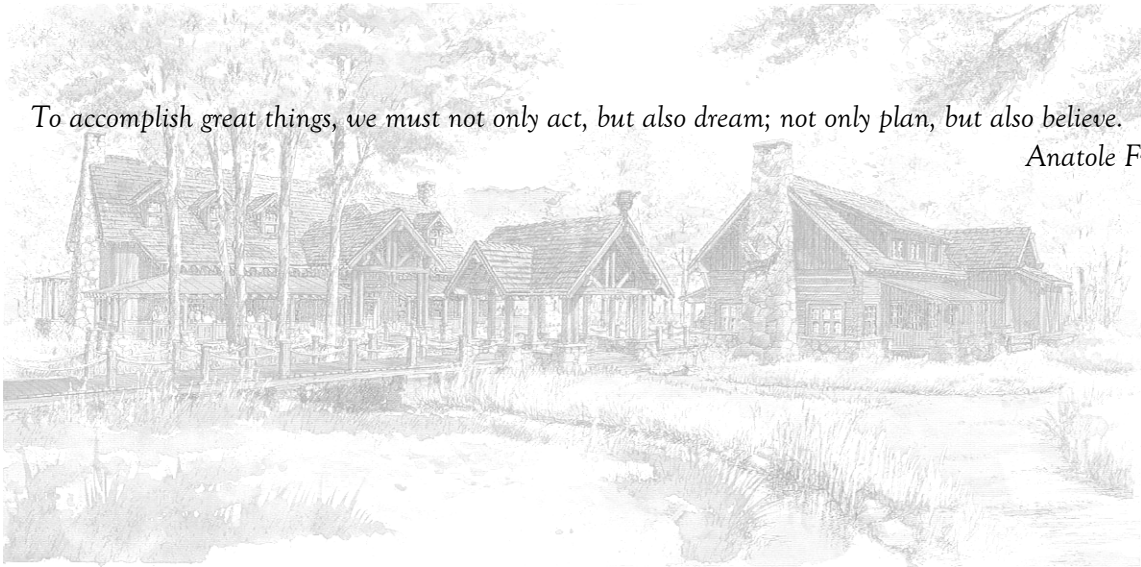
One of the Community's richest natural resources is the abundant wildlife found throughout. In an attempt to protect the wildlife within the Community, the "Wildlife Mitigation Plan" (the "**Mitigation Plan**"), as recorded _____ under Reception No. _____, Routt County, Colorado records. The Mitigation Plan sets out specific obligations and responsibilities of the Owners and occupants of Homesteads within the Community as well as obligations and responsibilities of the Association and Declarant.

The Community is a "planned community" as defined in the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.* (the "**Act**"), and is subject to the provisions of that Act in addition to the provisions of this Charter.

PART ONE: INTRODUCTION TO THE COMMUNITY

To accomplish great things, we must not only act, but also dream; not only plan, but also believe.

Anatole France



Chapter 1

Governing Documents

A community is guided and governed by certain principles that each owner and occupant, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which bind the community together, give it structure, and provide guidance to all

who participate in its growth and evolution.

1.1. Scope and Applicability.

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and

GOVERNING DOCUMENTS	
Development Approvals	the specific approvals required by Routt County, Colorado with respect to the Community
Community Charter: (recorded)	this Community Charter for Marabou, which creates obligations that are binding upon the Association and all present and future owners of property in Marabou
Supplement: (recorded)	a recorded amendment to this Charter, which submits additional property to this Charter, creates easements over such property, imposes additional obligations or restrictions on property described in the Supplement, designates special areas as described in Chapter 3, or any of the foregoing
Plat: (recorded)	the recorded plat identified on Exhibit "A" to the Charter, and incorporated into the Charter by this reference, and any other recorded plat or map satisfying all of the requirements of the Act subsequently recorded with a Supplement annexing any or all of the property described on Exhibit "B" to the Charter
Mitigation Plan (recorded)	the Wildlife Mitigation Plan setting forth specific obligations of Owners and occupants of the Community as well as the Association and Declarant with respect to the environment of a broad suite of native wildlife species
Articles of Incorporation: (filed with Secretary of State)	the Articles of Incorporation of Marabou Owners Association, Inc., as they may be amended, which establish the Association as a nonprofit corporation under Colorado law
By-Laws:	the By-Laws of Marabou Owners Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
Design Guidelines: (Declarant adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to property in the Community, including structures, landscaping, and other items
Rules: (initial set attached as Exhibit "C")	the rules of the Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Marabou
Board Resolutions: (Board adopts)	the resolutions which the Association's Board of Directors adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of the property which the Association owns or controls

Governing Documents

occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the "**Governing Documents**," include this Charter and the other documents described in Table 1.1, as they may be amended. All Owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

1.2. Additional Covenants and Restrictions.

The owner of any property within the Community may impose covenants on such property in addition to those set forth in the Governing Documents, with such approval as may be required pursuant to Chapter 19. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

1.3. Conflicts and Ambiguities.

If there are conflicts between any of the Governing Documents and Colorado law, Colorado law shall control. If there are conflicts between or among any of the Governing Documents, then the Development Approvals, the Charter, the Plat, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not

affect the validity of other provisions or applications of such provision in other instances.

The Board may, by resolution, resolve any ambiguities in the Governing Documents, and any reasonable interpretation of an ambiguous provision shall be determinative. No Board interpretation of ambiguities in the Development Approvals shall be binding on Routt County, Colorado.

1.4. Definitions.

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found at the beginning of this Charter. All other terms used in the Governing Documents have their usual, commonly accepted definitions.

1.5. Interpretation of Certain References.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "determine" any matter shall mean the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, any one authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

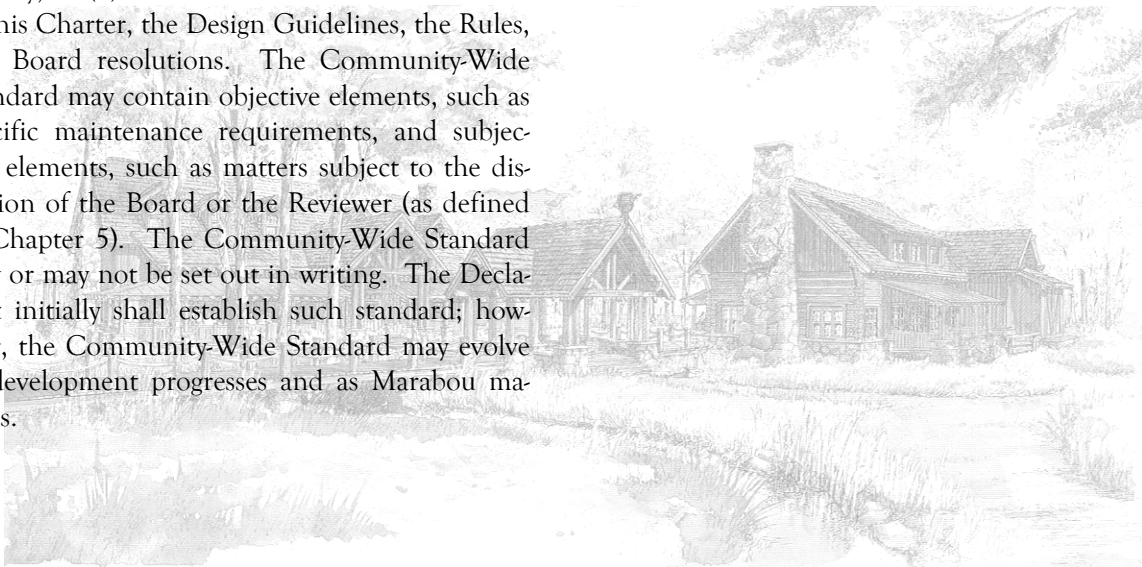
Person. References in the Governing Documents to a "**Person**" or "**Persons**" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a "**recorded**" legal instrument, or

Governing Documents

to recordation or the recording of a legal instrument, shall refer to an instrument filed or recorded, or the filing or recording of a legal instrument, in the official records of Routt County, Colorado, or such other place designated as the official location for filing documents affecting title to real estate in Routt County in order to make them a matter of public record.

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Marabou matures.



Chapter 2

Community Administration

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Declarant, the Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This chapter identifies these stakeholders and describes their roles in administering the Community.

2.1. The Declarant.

The Declarant has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Declarant's proposed plan for development of the Community is described in plans approved or to be approved by Routt County, Colorado, referred to herein as the Master Plan for Marabou (the "**Master Plan**"), as it may be amended, and encompasses all of the property described in Exhibit "A" and may encompass all or a portion of the property described in Exhibit "B." However, the Declarant is not obligated to submit property shown on the Master Plan to this Charter. In addition, the Declarant may submit property to this Charter that is not shown on the Master Plan.

The Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Declarant may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Declarant or any "Declarant Affiliate" owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 18. A "**Declarant Affiliate**" is any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

The Declarant has reserved other rights that may be exercised during the "**Declarant Control Period**," which is the period of time that the Declarant is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). It begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) 60 days after the conveyance of 75% of the total number of Homesteads (as defined in Section 3.1) permitted by the Master Plan to Persons other than a declarant (as defined in the Act);
- (b) two years after the last conveyance of a Homestead by the Declarant or a Declarant Affiliate in the ordinary course of business;
- (c) two years after the Declarant last exercised its unilateral right to submit additional property to this Charter pursuant to Section 18.1; or
- (d) when, in its discretion, the Declarant voluntarily and expressly surrenders such right in a recorded instrument.

The Declarant has certain approval rights for a limited period as provided in the By-Laws after the termination of the Declarant Control Period.

The Declarant may assign its status and rights as the Declarant under the Governing Documents to any Declarant Affiliate or any person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

Community Administration

2.2. The Association.

The Declarant has established the Association as the primary entity responsible for administering Marabou in accordance with the Governing Documents. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable laws limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Colorado law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers that the Governing Documents and Colorado law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

2.3. The Owners.

Each Person that holds record title to a Homestead, as defined in Chapter 3, is referred to in the Governing Documents as an "Owner."

However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Homestead is sold under a recorded contract of sale and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Homestead has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Chapters 3 and 4 and in the By-Laws.

2.4. Mortgagees.

If a Homestead is made subject to a mortgage, deed of trust, or other form of security instrument affecting title to a Homestead ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 17.

2.5. Development Approvals.

The Community will be developed in accordance with (i) the Routt County/Marabou Development Agreement, as it may be amended ("**Development Agreement**"), (ii) the Conditional Use Permit, as the same may be amended (the "**CUP**") together with any other requirements in any development approvals or agreements required by Routt County, Colorado relating to the Community (collectively, the "**Development Approvals**"). In the event of a conflict between any of the other Governing Documents and the Development Approvals, the applicable

Community Administration

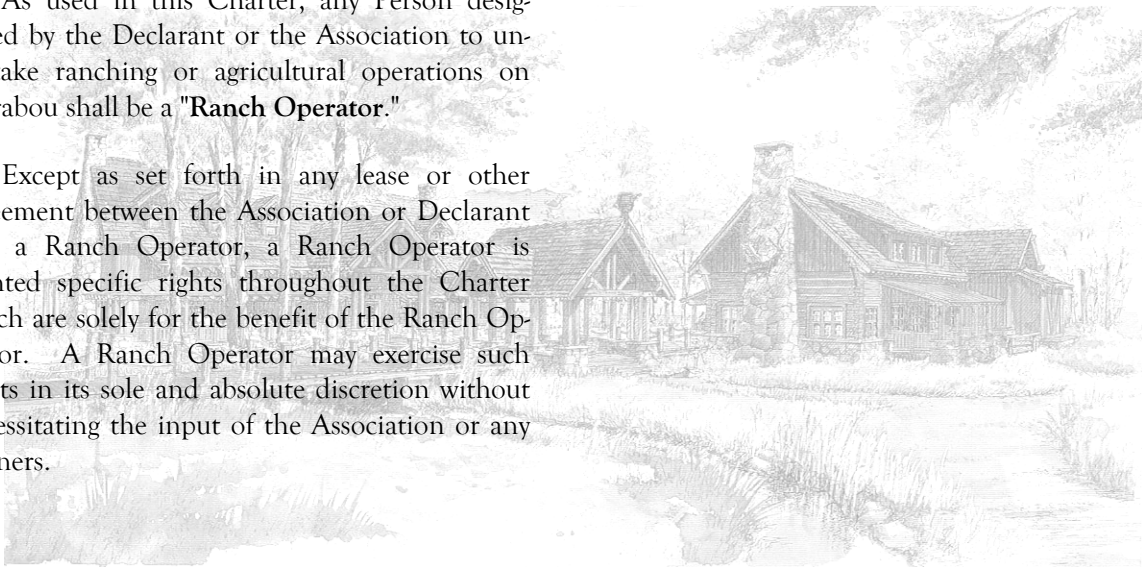
Development Approval shall control with respect to that portion of the Community.

In addition to other specific requirements set forth in the Development Approvals, the provisions of the Development Approvals setting forth the intended and permitted land uses, the maximum permitted densities, the total number of Homesteads permitted, and the total square footage of non-residential permitted, each as applicable to specific portions of the Community, are hereby expressly incorporated herein by this reference.

2.6. Ranch Operator

As used in this Charter, any Person designated by the Declarant or the Association to undertake ranching or agricultural operations on Marabou shall be a "**Ranch Operator**."

Except as set forth in any lease or other agreement between the Association or Declarant and a Ranch Operator, a Ranch Operator is granted specific rights throughout the Charter which are solely for the benefit of the Ranch Operator. A Ranch Operator may exercise such rights in its sole and absolute discretion without necessitating the input of the Association or any Owners.



Chapter 3

Community Structure and Organization

The Community consists of parcels of property, referred to as Homesteads, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Homesteads may be assigned to Service Areas to permit the Association to provide special services and benefits to particular areas of the Community.

3.1. Designations of Properties Comprising the Community.

Homesteads. The Governing Documents refer to the homes and home sites in Marabou as "**Homesteads**." A Homestead is a portion of the Community which is depicted as a separately identified lot or parcel on the Plat and which is zoned or otherwise intended for development, use, and occupancy as a residence for a single family. The term "Homestead" refers to the land, if any, which is part of the Homestead, as well as to any structures or other improvements on the Homestead. The term Homestead shall also include the parcel identified as "Remainder Parcel 2" on the Plat.

The boundaries of each Homestead shall be as follows: the vertical boundaries shall be the plane formed by the boundaries shown on the Plat and there shall be no horizontal boundaries, unless otherwise specified in a recorded declaration of covenants applicable to such Homestead.

Each Homestead shall be identified by a unique number on the Plat depicting such Homestead.

Homesteads shall not be further subdivided.

Common Area. Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Homestead is referred to as "**Common Area**." The Common Area also includes any property that the Association

holds under a lease and any easements in favor of the Association.

Limited Common Area. Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of less than all Homesteads or Homesteads in specified portions of the Community. Limited Common Areas might include such things as entry features, designated shared driveways providing access to more than one Homestead as more particularly described in Section 13.11, recreational facilities, lakes, and landscaped medians and cul-de-sacs, among other things.

The terms "Common Area" and "Limited Common Area" shall be given the same meaning as the terms "Common Element" and "Limited Common Element," respectively, in the Act.

The Declarant may designate property as Limited Common Area and assign it to particular Homesteads on the Plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the Development and Sale Period, the Declarant may assign use of the same Limited Common Area to additional Homesteads.

Area of Common Responsibility. All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "**Area of Common Responsibility**," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Homesteads or portions of Homesteads and property dedicated to the public, such

Community Structure and Organization

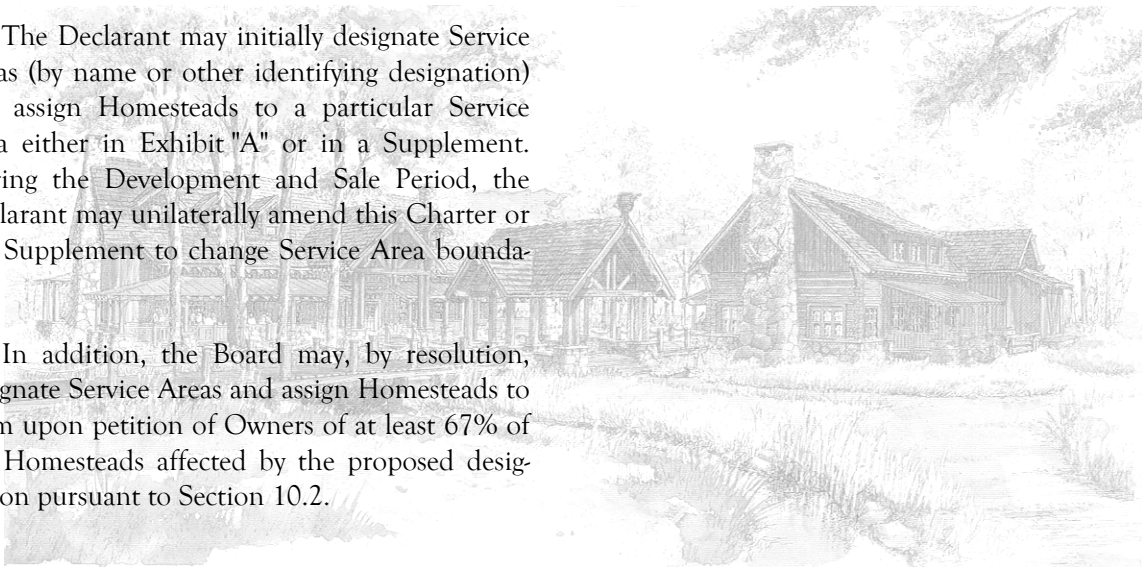
as public rights-of-way. The initial Area of Common Responsibility is described in Chapter 9.

3.2. Service Areas.

Homesteads may also be part of one or more "Service Areas" in which the Homesteads share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Homesteads within the Community. A Homestead 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 Homesteads of more than one housing type and may include Homesteads that are not contiguous.

The Declarant may initially designate Service Areas (by name or other identifying designation) and assign Homesteads to a particular Service Area either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Declarant may unilaterally amend this Charter or any Supplement to change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Homesteads to them upon petition of Owners of at least 67% of the Homesteads affected by the proposed designation pursuant to Section 10.2.



Chapter 4

Association Membership and Voting Rights

The Association is a mechanism by which each Owner can participate in the governance and administration of Marabou. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

4.1. Membership.

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, and the Declarant membership, which consists solely of the Declarant. Any Person holding a membership in the Association is sometimes referred to in this Charter as a "**Member.**"

(a) **Owner Membership.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Homestead. Thus, if a Homestead has more than one Owner, all co-Owners of the Homestead share the privileges of such membership, subject to the provisions of Chapter 14 with respect to the use of the "**Recreational Amenities,**" reasonable Board regulation, and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may, subject to the provisions of Chapter 14, be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary.

(b) **Declarant Membership.** The Declarant holds the sole Declarant membership. The Declarant membership shall terminate upon the first of the following to occur:

(i) 60 days after the conveyance of 75% of the total number of Homesteads permitted by the

Master Plan to Persons other than a declarant (as defined in the Act);

(ii) two years after the last conveyance of a Homestead by the Declarant in the ordinary course of business;

(iii) two years after the Declarant last exercised its unilateral right to subject additional property to this Charter pursuant to Section 18.1; or

(iv) when, in its discretion, the Declarant voluntarily and expressly surrenders such right in a recorded instrument.

The Declarant may, by Supplement, create additional classes of membership comprised of the owners of Homesteads within any portion of the additional property submitted to this Charter. The Declarant shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

4.2. Voting.

Each Homestead is assigned one equal vote, subject to the limitations on voting set forth in this Charter and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.10. Further, during the Declarant Control Period, no vote shall be exercised for Homesteads that the Declarant owns; rather, the Declarant's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

If there is more than one Owner of a Homestead, the vote for such Homestead shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in

Association Membership and Voting Rights

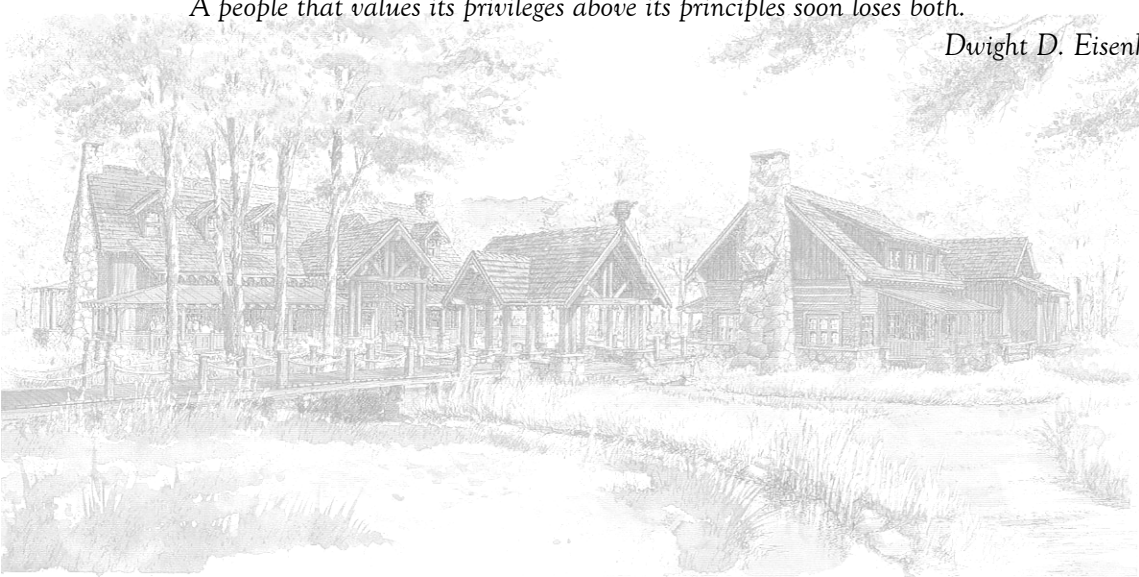
writing prior to the vote being taken. Absent such advice, the Homestead's vote shall be suspended if more than one Person seeks to exercise it.



PART TWO: COMMUNITY STANDARDS

A people that values its privileges above its principles soon loses both.

Dwight D. Eisenhower



Chapter 5

Architecture, Landscaping and Aesthetic Standards

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Owners in upholding minimum design, landscaping and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Homesteads.

5.1. General.

All site work, landscaping, structures, improvements, and other items placed on a Homestead in a manner or location visible from outside of any existing structure on the Homestead ("**Improvements**") are subject to standards for design, landscaping and aesthetics adopted pursuant to this chapter ("**Design Guidelines**") and the approval procedures set forth in this chapter, except as this chapter or the Design Guidelines may otherwise specify.

To preserve the natural environment and to protect the natural landscape and resources within Marabou, all Improvements to a Homestead comprising a dwelling (primary or secondary) shall be confined to the allowable building area of the Homestead ("**Building Envelope**"). The Building Envelope for each Homestead shall be depicted on the Plat.

No Improvements shall be made to a Homestead, and the Reviewer, as defined below, shall not review an application under Section 5.3(b) until Declarant determines the Building Envelope. Only the Declarant may modify the Building Envelope. Modification to a Building Envelope shall be in accordance with the applicable terms and conditions of the applicable Development Approvals with the consent of Routt County, Colorado. Except with the prior written approval of the Reviewer, all areas of a Homestead outside the Building Envelope shall remain undisturbed and shall remain in their natural state except for the approved driveway from the

main access road to the Building Envelope, utilities, entry features, and associated landscape features unless selective clearing or other changes to the natural landscape are mandated by any governmental agency or as necessary for any Ranching Operations.

In addition to any requirements promulgated by the Governing Documents, due to the susceptibility of the area where Marabou is located to wildland fires, the Owner of each Homestead shall comply with the requirements and guidelines promulgated by the Colorado State Forest Service and any other applicable agency with respect to wildland fire mitigation measures and shall install and maintain in good working order a fire sprinkler system which satisfies the requirements of all local governmental requirements. Such sprinkler requirement shall only apply in the event the roads within Marabou are no greater than 20 feet in width.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Homestead shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Declarant or its designee in its sole discretion otherwise approves.

Approval under this chapter is not a substitute for any approvals or reviews required by Routt County, Colorado or any municipality or

Architecture, Landscaping and Aesthetic Standards

governmental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to the Declarant's or any Declarant Affiliate's design and construction activities or to the Association's design and construction activities during the Declarant Control Period.

5.2. Review Authority.



Initially, the Declarant reviews applications for proposed Improvements. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Declarant or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

(a) **Declarant.** The Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Homesteads planned for the property described in Exhibits "A" and "B" have been improved with dwellings for which a certificate of occupancy has been issued. The Declarant may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Declarant and its designee act solely in the Declarant's interest and owe no duty to any other Person.

From time to time, the Declarant may delegate any or all of its rights under this chapter to other Persons or committees, including the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Declarant's right to revoke such delegation at any time and reassume its prior control, and (ii) the Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Declarant has any rights under this chapter, the jurisdiction of others shall be limited to

such matters as the Declarant specifically delegates.

(b) **Design Review Committee.** Upon the Declarant's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Declarant's rights under this chapter, the Board shall appoint a Design Review Committee ("Design Review Committee" or "DRC") to assume jurisdiction over matters within the scope of the delegated authority or this chapter, respectively. The DRC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

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

Unless and until such time as the Declarant delegates all or a portion of its reserved rights to the DRC or the Declarant's rights under this chapter terminate, the Association shall have no jurisdiction over architectural matters.

(c) **Reviewer.** For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer."

(d) **Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals

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review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

(e) **Enforcement.** In addition to any other enforcement rights and remedies set forth in this Charter, Reviewer is authorized to issue a "stop order" in the event it determines, in its sole discretion, any Improvement to the Homestead does not conform to the approved plans, the Charter, or the Design Guidelines. In the event Reviewer issued such "stop order," all Improvements to the Homestead shall cease and Owner shall meet with Reviewer not less than seven days after such "stop-order" is issued to discuss the reasons for such order. Improvement to the Homestead shall not re-commence until Reviewer lifts the "stop order."

5.3. Guidelines and Procedures.

(a) **Design Guidelines.** The Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Marabou as well as specific provisions that vary among uses or locations within the Community, including, but not limited to, requiring downcast lighting, prohibiting floodlights, and permitting no more a maximum of 22 secondary dwellings within the Homesteads. The Design Guidelines shall also provide that the Owner of a Homestead, or the Association if Common Area shall revegetate with a native seed mixture all road or driveway cuts and construction sites within one growing season of completion of the construction causing ground disturbance. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Declarant also

delegates the power to amend to the DRC. Upon termination or delegation of the Declarant's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved even though work on the approved construction or modification has not begun. However, any new work on such structures requiring further approval must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners, Builders, and their contractors upon request and may charge a reasonable fee to cover costs of printing or reproduction. In the Declarant's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) **Procedures.** Unless the Design Guidelines provide otherwise, no activities within the scope of this chapter (as described in Section 5.1) may begin on any portion of Marabou until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the

Architecture, Landscaping and Aesthetic Standards

desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The 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 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.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Declarant's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period; provided, if no time period is specified in the approval, construction shall commence within 12 months of the date of the approval. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities unless the Reviewer, in its discretion, grants an extension in writing. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 24 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this chapter, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

5.4. No Waiver of Future Approvals.

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. The Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances.



When unusual circumstances exist that make it difficult to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as

Architecture, Landscaping and Aesthetic Standards

topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

5.6. Limitation of Liability.

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Marabou; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The 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.

The Declarant, Declarant Affiliates, the Association, its officers, the Board, any committee, and any member of any of the foregoing, shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) 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 the Declarant has approved or featured such contractor to construct Improvements within Marabou; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Homestead. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

5.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this chapter or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.



Chapter 6

Maintenance, Repair and Replacement

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the Community. This chapter describes the Owners' responsibilities for maintenance and repair of their Homesteads and for insuring their Homesteads against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance of Homesteads.

Each Owner shall maintain that portion of the Homestead within the Building Envelope, including all structures, landscaping, and other improvements, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Charter, any Supplement, or by law. All such portions of the Homestead outside of the Building Envelope shall be maintained by the Association in accordance with the provisions of Section 9.2.

6.2. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Homestead, less a reasonable deductible, unless the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Homestead, the premiums for such insurance shall be levied as a Specific

Assessment against the benefited Homestead and the Owner.

Within 90 days after damage to or destruction of a structure on a Homestead, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Homestead of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Homesteads and for clearing and maintaining the Homesteads in the event the structures are not rebuilt or reconstructed.

6.3. Maintenance and Repair of Party Walls and Similar Structures.

Each wall, fence, driveway (other than Joint Driveways maintained by the Association in accordance with Section 6.4), or similar structure that serves and/or separates any two adjoining Homesteads shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

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

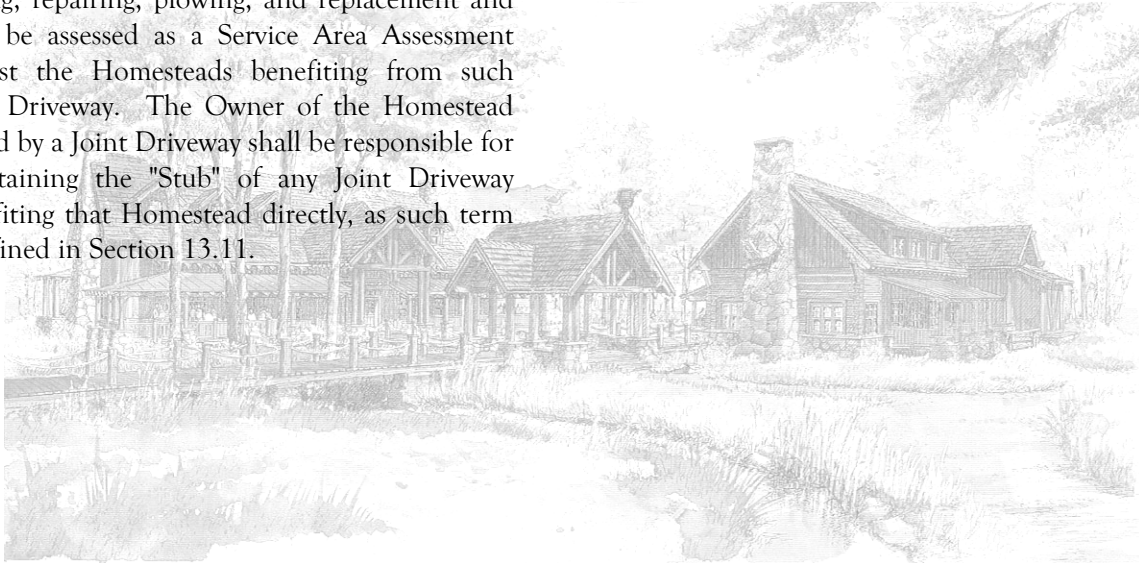
Maintenance, Repair and Replacement

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.

Any Owner's right 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.

6.4. Maintenance Joint Driveways

The Association shall maintain the "Trunk" of any "Joint Driveway," as such terms are defined in Section 13.11, installed as part of the initial construction of the Homesteads. Such maintenance shall include, but shall not be limited to, paving, repairing, plowing, and replacement and shall be assessed as a Service Area Assessment against the Homesteads benefiting from such Joint Driveway. The Owner of the Homestead served by a Joint Driveway shall be responsible for maintaining the "Stub" of any Joint Driveway benefiting that Homestead directly, as such term is defined in Section 13.11.



Chapter 7

Use and Conduct

In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy and transfer of interests in Homesteads. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct and activities within the Community to address particular needs and desires of the Community over time.

7.1. Use, Occupancy, and Transfer of Interests in Homesteads.

(a) ***Residential and Related Uses.*** Homesteads may be used only for residential and related purposes, except as the Declarant may otherwise authorize with respect to construction, marketing and sales activities of the Declarant in accordance with the Development Approvals. A business activity shall be considered "related" to a residential use and thus permitted under this Section only if conducted by a person or persons residing in the Homestead and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable Routt County, Colorado zoning requirements regarding home occupations and home industries;

(iii) does not involve regular visitation of the Homestead by employees who do not reside in the Homestead, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of the Community in which the Homestead is located and does not constitute a nuisance or a hazardous or offensive use, or threaten

the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing a Homestead for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Homestead at any time. This provision shall not preclude an institutional lender from leasing a Homestead upon taking title following foreclosure of its security interest in the Homestead or upon acceptance of a deed in lieu of foreclosure. For purposes of this Charter, the terms "**Lease**" and "**Leasing**" shall refer to the regular, exclusive occupancy of a Homestead by any Person other than the Owner, for which the Owner receives any consideration or benefit.

(b) ***Leasing.*** Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any garage apartment, "in-law suite," "guest house," or similar structure approved pursuant to Chapter 5 may be leased separate from the main dwelling so long as such lease is consistent with applicable zoning restrictions and requirements.

Use and Conduct

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Homestead are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed, the Owner of the leased Homestead shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this sub-section, the Association or the Board may adopt Rules governing leasing and subleasing.

(c) **Transfer of Title.** Within seven days of the purchase of a Homestead, the new Owner will provide in writing to the Board the name of the Owner, the individual who will be that Homestead's Designated User and the names of the individuals who are the Designated User's Immediate Family Members, as such terms are defined in Chapter 14. The Owner transferring title to the Homestead shall provide the purchaser of the Homestead the information required by §38-33.3-223 of the Act, when applicable.

(d) **Subdivision and Combination of Homesteads.** Homesteads may not be subdivided. No Person other than the Declarant or Declarant Affiliates shall change the boundary lines of any Homestead or combine Homesteads without the Board's prior written approval, subject to any prohibitions set forth in the Routt County, Colorado zoning resolutions or subdivision regulations, Development Approvals, or the Master Plan. With the prior written consent of the Declarant during the Declarant Control Period, and the Board thereafter, the Owner of two or more contiguous Homesteads may consolidate the Homesteads for the sole purpose of constructing a single family dwelling thereon, subject to any and all requirements of any governmental entity. In the event of such consolidation, and

notwithstanding anything to the contrary in this Charter or elsewhere, such consolidated Homesteads shall continue to be treated as separate Homesteads for the purpose of voting and assessment, even though subsequently such Homesteads may be replatted to create one Homestead for all other legal purposes.

(e) **Timesharing.** No Homestead shall be used for operation of a timesharing, fraction-sharing, residence club, or similar program whereby the right to exclusive use of the Homestead rotates among participants in the program on a fixed or floating time schedule over a period of years.

7.2. Horses, Cattle, and Other Animals

In order to avoid interference with the ongoing Ranching Operations, as such term is defined in Chapter 16, horses, cattle, and other animals (aside from those animals permitted in Exhibit "C") are not permitted to be kept on any part of any Homestead by an Owner, occupant, or Owner's agent. The intent is to protect the ongoing Ranching Operations and the health and safety of the animals. Barns, stables, paddocks, or other facilities for raising, breeding, or keeping animals are prohibited on a Homestead; however, they may be provided for by the Association on the Common Area.

In addition, each Owner shall take all necessary steps to prevent their household pets from interfering with the ongoing Ranching Operations. If an Owner's pet interferes with Ranching Operations, such Owner shall be subject to sanctions for non-compliance set forth in Section 8.2.

Every Owner, by acceptance of a deed to a Homestead, acknowledges that it is not the obligation of the Ranching Operations and others to keep any animals within their property but the obligation of the Owner of a Homestead to keep animals out of their Homestead. Thereafter, every Homestead Owner shall have the affirmative duty and obligation to erect and maintain a fence along the perimeter of their Building Envelope to keep animals out. Such fences shall be

Use and Conduct

constructed in compliance with the provisions of the Design Guidelines and erected within a reasonable time of closing of the transfer of title to a Homestead as set forth by the Reviewer. Failure of any such fence to keep such animals out shall not confer any liability on the Reviewer, the Association, Declarant, or the Ranching Operations.

Equestrian facilities for boarding and the provision of veterinary services may be located on the Common Area and may be available to Owners in accordance with such a separate agreement and arrangements entered into by and between such Owners and the Association or the Marabou Club.

Owners are prohibited from undertaking any Ranching Operations on their Homestead or within the Community.

7.3. Rulemaking Authority and Procedures



Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board and the Association membership have the authority to adopt and modify rules as needed to address these changing circumstances.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Association's membership are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.4.

(a) **Board Authority.** Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Rules and modify or re-

scind existing Rules by majority vote of the directors at any Board meeting.

(b) **Membership Authority.** Subject to the notice requirements in subsection (c), Owners entitled to cast more than 50% of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as the Declarant membership exists, any such action shall also be subject to the Declarant's approval.

(c) **Notice.** The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the membership at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(d) **Effective Date.** A Rules change adopted under this Section 7.3 shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

(e) **Conflicts.** No action taken under this Section 7.3 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.

Use and Conduct

7.4. Protection of Owners and Others.

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Homesteads shall be treated similarly; however, the Rules may vary by Service Area.

(b) *Displays.* No Rule shall abridge an Owner's right to display political, religious or holiday symbols and decorations on his or her Homestead of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs except content or graphics which the Board deems to be obscene, vulgar, or similarly disturbing to the average person. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Homestead, including reasonable limitations on size and number.

(c) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Homestead size and facilities and its fair share use of the Common Area.

(d) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Homesteads or rights to

use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

(f) *Leasing and Transfer of Homesteads.* No Rule shall prohibit leasing or transfer of any Homestead or require approval prior to leasing or transferring a Homestead; however, the Rules may require a minimum lease term of up to six months. Minimum lease terms may vary by Service Areas. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

(g) *Abriding Existing Rights.* No Rule shall require that an Owner dispose of personal property kept in or on a Homestead in compliance with the Rules in effect at the time such personal property was brought onto the Homestead. This exemption shall apply only during the period of such Owner's ownership of the Homestead and shall not apply to subsequent Owners who take title to the Homestead after adoption of the Rule.

(h) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with the ability of the Declarant or Declarant Affiliates to develop, market, and sell property in Marabou.

(i) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement.

The limitations in Sections 7.4(a) through (i) shall only limit rulemaking authority exercised under Section 7.3; they shall not apply to

Use and Conduct

amendments to this Charter adopted in accordance with Chapter 22.

7.5.. Owners' Acknowledgment and Notice to Purchasers.

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Homestead is limited and affected by the Rules, which may change from time to time. All Homestead purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

7.6. Statement and Owners' Acknowledgment Regarding Traditional Land Uses.

By accepting a deed, each Owner acknowledges and agrees that the nature of land use and demography in rural Routt County, Colorado is changing and such change can increase the contact and interaction between neighboring agricultural and hunting uses and Owners and their guests at Marabou. Marabou is committed to the protection of the benefits derived from traditional land uses such as agriculture and hunting ensuring a compatible and productive relationship between Owners and their guests and their neighboring landowners.

Each Owner hereby acknowledges and accepts the activities, sights, sounds, and smells of rural Routt County, Colorado, including, but not limited to, recreational hunting and discharge of firearms on adjacent properties; occasional unintended trespass by livestock; maintenance of irrigation ditches across property within Marabou; and weed and pest control, including application by spraying or otherwise of chemical fertilizers, herbicides, and pesticides.

Each Owner hereby acknowledges that the boundaries of Marabou abut private properties.

Signs have or will be erected alerting Owners of Marabou's boundaries. Travel beyond the boundaries of Marabou onto adjacent private property without appropriate permission of the property owner is a trespass and shall be avoided.



Chapter 8

Compliance and Enforcement

The covenants, standards and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Association for noncompliance.

8.1. Compliance.

Every Owner, occupant and visitor to a Homestead must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants of or visitors to their Homesteads, and for any damage to the Area of Common Responsibility that such occupants or visitors cause.

8.2. Remedies for Non-Compliance.



All Owners are required to abide by the Governing Documents. If an Owner fails or refuses to obey the Governing Documents the Owner may be subject to various penalties including fines and the loss of the right to use the Common Areas.

The Association, the Declarant, any Declarant Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an opportu-

nity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Homestead. In the event that any occupant, guest, or invitee of a Homestead violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 90 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Homestead remains delinquent, (B) in the case of any violation other than with respect to the Recreational Amenities, for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association), and (C) with respect to the Recreational Amenities, for a period established by the Association in accordance with the provisions of Chapter 14; however, nothing herein shall authorize the Board to limit ingress or egress to or from a Homestead;

(iv) suspend services the Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

Compliance and Enforcement

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5 and the Design Guidelines from continuing or performing any further activities in Marabou;

(vii) levy Specific Assessments to cover costs the Association incurs in bringing a Homestead into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation with respect to any Homestead on which a violation exists.

(b) **Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Homestead in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Homestead that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

8.3. Board Decision to Pursue Enforcement Action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

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

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

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

8.4. Attorneys Fees and Costs.

In any action to enforce the Governing Documents, if the Association prevails, it shall recover all costs, including, without limitation,

Compliance and Enforcement

attorneys' fees and court costs, reasonably incurred in such action.

8.5. Enforcement of County Resolutions and Regulations.

The Association, by contract or other agreement, may enforce applicable city and county resolutions and regulations. In addition, the County of Routt, Colorado may enforce their resolutions and regulations within Marabou.

8.6. Enforcement Rights of Ranch Operator

So long as a Ranch Operator owns or has the right to undertake Ranching Operations, such Ranch Operator may enforce the provisions of the Governing Documents at law or in equity with respect to such Ranch Operations.

Prior to undertaking any such enforcement action, a Ranch Operator shall give written notice to the Association and the violating Owner setting forth the violation and the requisite cure and the Association and/or the Owner has been given the opportunity to effectuate such cure which shall be undertaken no more than seven days after such written notice has been received by the Association and the Owner.

In the event neither the Association nor the Owner cure the violation, Ranch Operator shall be entitled to recover from the Association all costs expended in curing the violation. The Association shall promptly reimburse Ranch Operator for all such costs and such amounts shall be a Specific Assessment levied against the Homestead of the Owner violating the Governing Documents in accordance with Chapter 12.



PART THREE: ASSOCIATION OPERATIONS

Do what you can, with what you have, where you are.

Theodore Roosevelt



Chapter 9

Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and occupants of Marabou. This chapter establishes the Association's obligation to accept property that the Declarant designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of the Community.

9.1. Acceptance and Control of Association Property.

(a) ***Transfers and Conveyances by Declarant.*** The Declarant, its designees, or any Declarant Affiliate may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Declarant's written request, the Association shall reconvey to the Declarant, or any Declarant Affiliate, any unimproved real property that the Declarant originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

(b) ***Management and Control.*** The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities, other than the Recreational Amenities and in accordance with the CUP, by persons other than Owners and occupants of Homesteads and may

charge use fees to compensate itself for any expenses for such use.

9.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area, including, but not limited to structures approved under the Development Approvals, all landscaping and other flora, natural formations, fences, if any, parks, lakes, structures, designated shared driveways providing access to more than one Homestead, entry gates and other improvements, any streets shown as such on a Plat within Marabou, biking, walking, and hiking pathways/trails, situated upon the Common Area, a Homestead, or abutting the Community;

(b) landscaping or improvements within public rights-of-way within or abutting Marabou, to the extent not maintained to the Community-Wide Standard by a unit of local government;

(c) any fencing erected along the common boundaries of Marabou and any and all private property abutting Marabou;

(d) such portions of any additional property as may be dictated by the Declarant, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and

(e) any property and facilities that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Declarant shall identify any such property and facilities by written notice to the Association, and

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they shall remain part of the Area of Common Responsibility until the Declarant revokes such privilege of use and enjoyment by written notice to the Association.

In addition, the Association shall maintain, or cause to be maintained, on behalf of the Owners of Homesteads, as part of the Area of Common Responsibility, all property on a Homestead located outside of the Building Envelope for the purposes of weed management, pasture management, wildlife habitat, and corridor management.

The Association may maintain other property it does not own, including, without limitation, that portion of a Homestead within the Building Envelope or property dedicated to the public if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

9.3. Discontinuation of Operation.

The Association shall maintain the Common Area facilities in operation unless the Declarant, during the Development and Sale Period, and Owners entitled to cast at least 67% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This Section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to restrict temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs or as otherwise required in the Development Approvals.

9.4. Restoring Damaged Improvements.



This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible *not* to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless:

- (a) this Charter is terminated pursuant to Section 22.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety;
- (c) the Declarant, during the Development and Sale Period, and at least 67% of the Owners, and in the case of a Limited Common Area, every Owner of a Homestead to which the Limited Common Area is assigned, vote within 60 days after the loss not to repair or reconstruct; or
- (d) prior to the conveyance of any Homestead by the Declarant or any Declarant Affiliate, the holder of a deed of trust or mortgage on the damaged property rightfully demands all or a substantial part of the insurance proceeds.

If the damage is to Homesteads insured by the Association within a Service Area, any decision not to restore the damaged improvements shall also require the approval of at least 67% of the Owners of Homesteads in the affected Service

Property Management

Area, including every Owner of a Homestead that will not be rebuilt.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. Except as provided above, no Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The insurance proceeds attributable to any Homesteads or Limited Common Areas that are not rebuilt shall be distributed to the Owners of such Homesteads and the Owners of Homesteads to which such Limited Common Areas were assigned, or to their respective lienholders, as their interests may appear, in proportion to their relative liability for Association expenses. The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Homesteads within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Homestead.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.



Chapter 10

Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Homesteads. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

10.1. Provision of Services to Homesteads.

The Association may arrange for or provide services to Owners and their Homesteads, directly or through contracts with the Declarant or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Homesteads, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services and technology services.

The Association may charge use fees for any such services or the Board may include the cost of services in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Homesteads. If services are provided to less than all Homesteads, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Homesteads being provided such service.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Homestead, may result in termination of services provided to such Homestead. Any such termination shall not relieve the Owner

of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Homestead as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

10.2. Provision of Services to Service Areas.

(a) *Service Areas Designated by Declarant.*

The Association shall provide services to Homesteads within any Service Area designated by the Declarant pursuant to Section 3.4 as required by the terms of any Supplement applicable to the Service Area.

(b) *Service Areas Designated by Board.* In addition to Service Areas which the Declarant may designate pursuant to Section 3.4, any group of Owners may petition the Board to designate their Homesteads as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Homesteads, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Homesteads within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Homesteads within the proposed Service Area approve the proposal in writing, the Board shall designate the Homesteads as a Service Area and include the fees for such ser-

Provision of Services

vice as a line item in the Service Area budget pursuant to Section 12.2(c).

10.3. Community Technology.

(a) *Community Systems.* The Declarant may provide, or may enter into and assign to the Association or cause the Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems as the Declarant determines appropriate.

The Association or Declarant may provide for access to any such Community System for all Homesteads as a Common Expense. If particular services or benefits are provided to particular Owners or Homesteads at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a Service Area Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

(b) *Opportunities for Community Interaction.* The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and occupants to interact and participate in Association-sponsored activities. To the extent Colorado law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Asso-

ciation meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.



Chapter 11

Association Insurance

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1. Required Coverages.

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within

a Service Area, which insurance shall comply with the above requirements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Homesteads plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Routt County, Colorado area.

Association Insurance

In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

11.2. Deductibles.



Persons who cause damage in Marabou may be held responsible for the insurance deductible payable on any insurance claim related to such damage.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Homesteads as a Specific Assessment.

11.3. Policy Requirements.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Colorado which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Com-

mon Area shall be for the benefit of the Owners of Homesteads within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Association of

Association Insurance

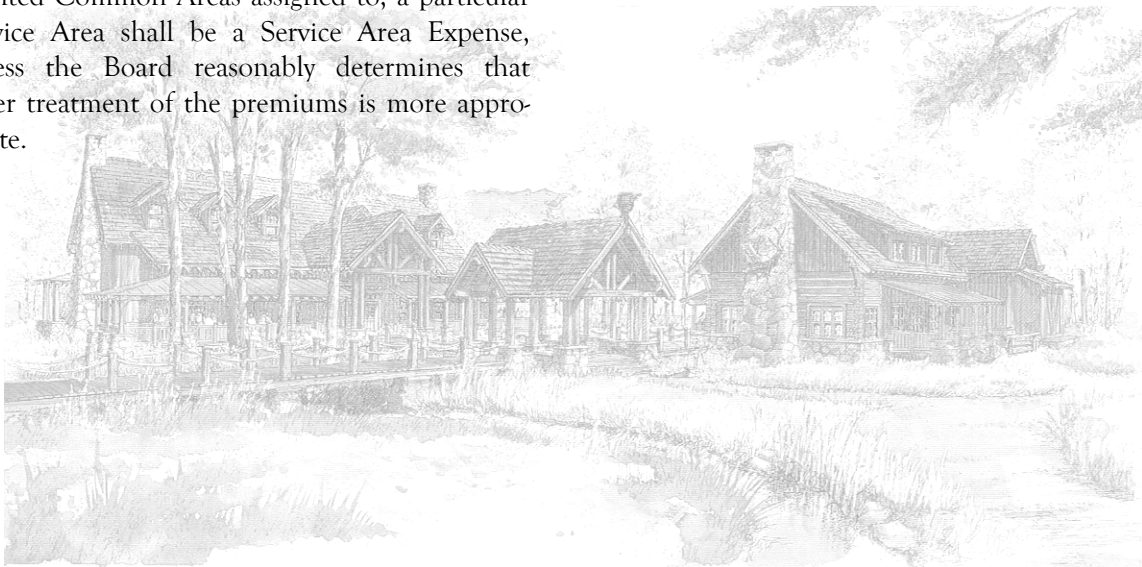
any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

11.4. Insurance Premiums.

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Homesteads within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.



Chapter 12

Association Finances

This chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments that this chapter authorizes the Association to levy against the Homesteads and collect from the Owner of each Homestead. Assessments are secured by a lien on each Homestead as described in this chapter.

12.1. Association Expenses.

(a) **Common Expenses.** Except as the Governing 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 finds necessary or appropriate. In addition, Common Expenses shall include a two year reserve for the maintenance cost of fences within Marabou which are the responsibility of the Association.

Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless Owners representing a majority of the total vote in the Association approve such expenditure. Payments due under leases of capital improvements such as streetlights shall not be considered an initial development or original construction cost.

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 other Persons who may be responsible for the expenses

incurred or for sharing such expenses pursuant to this Charter, any Supplement, or any other recorded covenants or agreements.

(b) **Service Area Expenses.** 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 other 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, are considered "Service Area Expenses." Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Homestead among all Service Areas receiving the same service.

12.2. Budgeting for and Allocating Association Expenses.

(a) **Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement

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cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Homesteads, and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Homesteads, shall be allocated among all Homesteads subject to assessment under Section 12.5 and levied as a **"Base Assessment."** Base Assessments shall be levied at a uniform rate per Homestead.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Declarant under Section 12.5(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

(c) Calculation of Service Area Assessments. The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Homesteads in the Service Area that are subject to assessment under Section 12.4 and levied as a **"Service Area Assessment."** Unless otherwise specified in any Supplement

applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Homestead in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Homesteads in proportion to the benefit received, as the Board may reasonably determine.

All amounts the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) Notice of Budget and Assessment; Right to Disapprove. Within 30 days after the Board adopts any budget, the Board shall send a summary of the budget, together with notice of the amount of the Base Assessment or any Service Area Assessment to be levied pursuant to such budget, to the Owner of each Homestead responsible for a share of the expenses covered by such budget. The notice shall announce the date set for a meeting of the Owners to consider such budget. The date of the meeting shall be not less than 14 or more than 60 days after the date of mailing or other delivery of the summary of the budget. The Common Expense budget shall automatically become effective unless vetoed at the meeting, whether or not a quorum is present, by Owners representing at least 75% of the total votes in the Association and by the Declarant, as long as the Declarant membership exists. Each Service Area budget shall automatically become effective unless vetoed at the meeting, whether or not a quorum is present, by Owners of at least 75% of the Homesteads within the Service Area and by the Declarant, as long as the Declarant membership exists.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, shall continue in effect until a

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new budget takes effect in accordance with the above procedures without veto by the members.

(e) **Budget Revisions.** The Board may revise the budget and adjust the Base Assessment or Service Area Assessments any time during the year, subject to the same notice requirements and veto procedures set forth in subsection (d) above.

(f) **Surplus Funds.** Any surplus funds of the Association remaining after payment of or provision for all Association expenses and any prepayment of or provision for reserves shall be taken into account in the income portion of the budget pursuant to which the funds were collected, in order to reduce the assessments that would otherwise be levied pursuant to that budget in the succeeding year.

12.3. 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 Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Owners entitled to cast more than 50% of the votes attributable to Homesteads subject to assessment under Section 12.4 and shall be allocated equally among all such Homesteads. 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 Homesteads in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 12.1(c). In addition, as long as the Declarant membership exists, any Special Assessment shall also be subject to the Declarant's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4. Specific Assessments.

The Association may levy **Specific Assessments** against a particular Homestead as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Homestead upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Homestead into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Homestead, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Homestead Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection (b).

12.5. Authority to Assess Owners; Time of Payment.

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Homestead on the first day of the month following the month in which the Association's first budget becomes effective, except that any portion of a Service Area assessment allocated to maintenance, repair or replacement of structures on or comprising Homesteads shall not commence until substantial completion of the structure. The first annual Base Assessment and Service Area Assessment, if any, levied on each Homestead shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Homestead.

Assessments shall be paid in such manner and on such dates as the Board may establish.

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The Board may require advance payment of assessments at closing of the transfer of title to a Homestead and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment 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 other charges levied on his Homestead, the Board may require the outstanding balance on all assessments to be paid in full immediately.

12.6. Obligation for Assessments.



By buying a Homestead in Marabou each Owner agrees to pay all assessments levied against his or her Homestead. If the Owner does not pay on time, the Owner will be charged late fees and interest on all past due amounts. Owners may not reduce their assessments because of any action or inaction by the Association.

(a) **Personal Obligation.** By accepting a deed or entering into a recorded contract to purchase any Homestead, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of Colorado law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Homestead until paid in full. Upon a transfer of title to a Homestead, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments on the same

basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Homestead, or non-use of services provided to all Homesteads or to all Homesteads within the Service Area to which the Homestead is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(b) **Assessment Statement.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Homestead, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Homestead, the amount of current periodic assessments and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested.

The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that become due before the date of such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

12.7. Lien for Assessments.



In order to insure that the Owner of each Homestead pays its share of Association expenses, the Association has a lien against each Homestead. If an Owner does not pay his or her assessments on time, the Association may foreclose the lien on such Owner's Homestead, causing it to be sold to pay the past due assessments. Alternatively, the Association may sue an Owner in court to recover past due assessments.

(a) **Creation of Lien.** In accordance with §38-33.3-316 of the Act, the Association shall have a statutory lien against each Homestead to secure payment of assessments, as well as interest, late charges (subject to the limitations of Colorado law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (a) liens and encumbrances recorded prior to this Charter and which the Association has assumed or taken subject to; (b) the liens of all real estate taxes and other governmental assessments or charges, and (c) the lien or charge of any Mortgage made in good faith and for value having first priority over any other Mortgages on the Homestead and recorded prior to the assessment becoming delinquent, except that the Association's lien shall have priority over any such Mortgage to the extent of assessments that would have become due in the absence of acceleration during the six months immediately preceding any judicial or nonjudicial foreclosure of the Mortgage.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Homestead the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) **Enforcement of Lien.** The Association may bid for the Homestead at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Homestead. While a Homestead is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Homestead shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Homestead had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) **Effect of Sale or Transfer.** Sale or transfer of any Homestead shall not affect the assessment lien or relieve such Homestead from the lien for any subsequent assessments. However, the sale or transfer of any Homestead pursuant to foreclosure of a first Mortgage having priority over the Association's lien pursuant to Section 12.7(a) shall extinguish the lien as to any installments of such assessments due more than six months prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Homestead shall not be personally liable for assessments on such Homestead due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Homesteads subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

12.8. Capitalization of Association.

The first Owner of each Homestead other than the Declarant or a Declarant Affiliate shall make a contribution to the working capital of the Association in an amount equal to one-fourth of the annual Base Assessment per Homestead for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Homestead and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Associa-

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tion immediately upon transfer of title, for its use in covering initial start-up expenses, operating expenses and other expenses which it incurs pursuant to this Charter and the By-Laws.

12.9. Use and Consumption Fees.

The Board may charge use and consumption fees to any Person using Association services or facilities and may determine the amount and method of determining such fees.

12.10. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, Specific Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant or a Declarant Affiliate as are included in the Area of Common Responsibility;

(b) Any property dedicated to and accepted by any governmental authority; and

(c) Any Homestead specified by Declarant to be owned by Owners as tenants-in-common or otherwise in undivided interests where such Homestead is prohibited from being improved by deed or any other recorded covenant or restriction, such as, but not limited to, the Homestead identified as "Remainder Parcel 2" on the Plat.

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

12.11. Preservation Fee.

(a) **Authority.** The Board shall have the authority, on behalf of the Association, to collect a fee from the transferring Owner upon each transfer of title to a Homestead within the Community (the "**Preservation Fee**"), unless exempt un-

der Section 12.11(d). The Preservation Fee shall be payable to the Association at the closing of the transfer, and shall be secured by the Association's lien for assessments under Section 12.7. The Association shall use the Preservation Fee to implement the Mitigation Plan and to maintain and improve the fisheries on the Elk River abutting the Community, provided, however, that funds in excess of those needed for the ongoing objectives of the Mitigation Plan may, from time to time, be utilized for any other purpose as determined by the Board, including, but not limited to charitable organizations. Each Owner shall notify the Association's Secretary or designee at least seven days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.

(b) **Determination of Preservation Fee Amount.** Initially, the Preservation Fee shall be .5% of the "gross selling price" of an unimproved Homestead and .5% of the "gross selling price" of an improved Homestead. For the purposes of this Section, a Homestead will be deemed to be "improved" if a single-family dwelling for which a certificate of occupancy has been issued is situated on the Homestead as determined by the Board. The Board shall have the authority to adjust the amount of the Preservation Fee upon the sale of a Homestead; however, such amount may not exceed 2.5% of the Homestead's gross selling price or be less than .5% of the Homestead's gross selling price. The "gross selling price" of a Homestead is the total cost to the purchaser of the Homestead, excluding transfer taxes and title fees imposed by Routt County, Colorado.

(c) **Purpose.** The Preservation Fee shall be used for the purposes set forth in Section 12.11(a).

(d) **Exempt Transfers.** Notwithstanding the above, no Preservation Fee shall be levied upon transfer of title to a Homestead:

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(i) by Declarant or a Declarant Affiliate;

(ii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(iii) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(iv) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Preservation Fee shall become due;

(v) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage;

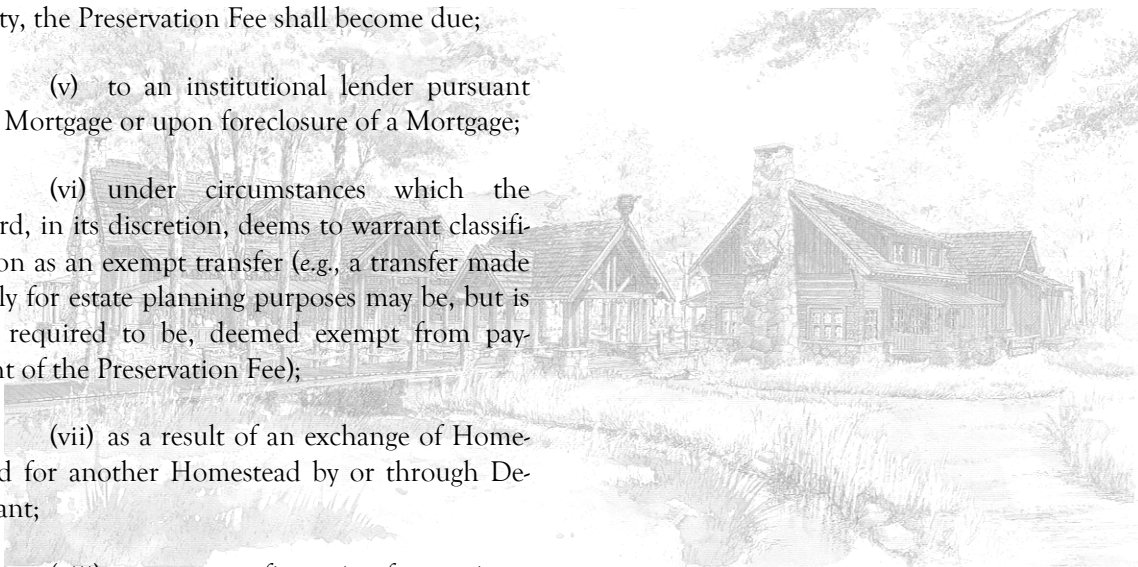
(vi) under circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Preservation Fee);

(vii) as a result of an exchange of Homestead for another Homestead by or through Declarant;

(viii) to a nonprofit entity for environmental preservation purposes; or

(ix) to the Association.

Furthermore, no Preservation fee shall be levied upon the transfer of a tenancy-in-common interest in a Homestead where the Homestead is prohibited from being improved by deed or any other recorded covenant or restriction, such as, but not limited to, the Homestead identified as "Remainder Parcel 2" on the Plat.



PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

You don't get harmony when everybody sings the same note.

Doug Floyd



Chapter 13

Easements

The easements created in this chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Declarant, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of the Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

13.1. Easements in Common Area.



An easement is one person's right to go onto the property of another.

The Declarant grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents and any other applicable covenants;

(b) Any restrictions or limitations contained in any plat or deed conveying such property to the Association, including, but not limited to, the restrictions regarding the maintenance of open space and Common Area as such;

(c) The Board's right to:

(i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, including the cabins, if any and subject to any use limitations imposed by the Association, and to charge use fees for such use;

(ii) suspend an Owner's right to use Common Area facilities, including, but not limited to, suspend the Owner's right to use the Recreational Amenities in accordance with Chapter 14;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter and any Development Approvals;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) make all or portions of the Recreational Amenities available to Designated Users or nonmembers for special events, including, without limitation, tournaments, private parties, and charitable events, to determine the number and scheduling of special events in its sole discretion, and to restrict use of the Recreational Amenities during such events; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the limitations on borrowing set forth in the By-Laws and the approval requirements set forth in Section 21.4;

(d) The Association's or its designee's right, but not the obligation, to conduct agricultural and ranching operations on the Common Area. Such agricultural use may include, but not be limited to, the cultivation of crops and grazing cattle. The funds received from the sale of such crops and other products shall be applied to the operating costs of the Association in order to reduce such costs.

(e) Certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area," if any.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. Provided,

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however, the right to use and enjoy the Recreational Amenities shall be in accordance with the provisions of Chapter 14.

13.2. Easements of Encroachment.



An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This Section permits minor, unintentional encroachments to remain.

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Homestead and any adjacent Common Area and between adjacent Homesteads. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3. Easements for Utilities, Etc.

(a) **Installation and Maintenance.** The Declarant reserves for itself, its successors, assigns, and designees, perpetual exclusive easements throughout Marabou (but not through a structure) for the purpose of:

(i) installing utilities and infrastructure, Community Systems, security and similar systems, and drainage systems to serve Marabou;

(ii) installing walkways, pathways and trails, street lights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat;

(iii) inspecting, maintaining, repairing, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access to read, maintain, and repair utility meters.

The Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, and to condition such access on negotiated terms.

(b) **Specific Easements.** The Declarant also reserves the right and power to grant and record such specific easements, consistent with Section 13.3(a), as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Homestead, nor shall it unreasonably interfere with the use of any Homestead and, except in an emergency, entry onto any Homestead shall be made only after reasonable notice to the Owner or occupant.

13.4. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement

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rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

In the event the water system serving Marabou is conveyed to the Association as Common Area and Declarant exercises any rights under this Section, the Association shall cooperate with Declarant and any property owner of the property described in Exhibit "B" not made subject to the Charter. Such cooperation shall include, without limitation, executing any agreement granting and setting forth any water use and rights to water and an equitable manner of sharing in the cost of any improvements, maintenance, and repair to such water system. Neither the Association nor any Owner shall interfere with Declarant or any such owners right to water in accordance with any such agreement.

If the above easement grants permanent access to any property which is not submitted to this Charter, the Declarant, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

13.5. Easements for Maintenance, Emergency, and Enforcement.



The Association may come onto a Homestead to perform maintenance or to address violations of the covenants, but will give prior notice unless there is an urgent need to enter the property.

By this Charter, the Declarant grants to the Association easements over Marabou as necessary to enable the Association to fulfill its maintenance responsibilities under Section 6.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Homestead for emer-

gency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

13.6. Easements for Lake and Pond Maintenance and Flood Water.



The Declarant has the right to access property adjacent to lakes, ponds, ditches, streams and wetlands for maintenance and irrigation purposes.

The Declarant reserves for itself and its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Declarant and its successors, assigns, and designees shall have an access easement over and across any of Marabou abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

The Declarant further reserves for itself and its successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Homesteads (but not the dwellings thereon) adjacent to or within 50 feet of bodies of water and wetlands within Marabou, in order to (a) temporarily flood and back water upon and maintain water over such portions of Marabou; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and

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landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Declarant or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.

13.7. Easements for Ranching and Agricultural Operations

The Declarant hereby grants a nonexclusive, perpetual easement over the Community (including all Common Areas and those portions of Homesteads outside of the Building Envelope but not over the Building Envelope or any structure constructed thereon) to the Association and any Ranch Operator for the purpose of exercising any right, privilege, or obligation set forth in this Charter with respect to ranching and agricultural operations over the designated areas. Such Ranch Operator may exercise such easement in its sole and absolute discretion without necessitating the input of the Association or any Owners and without regards to their affect on any Owner, Owner's Homestead, or the Association. Such Person shall not be liable to any Owner for any damage caused to a Homestead outside of the Building Envelope as a result of the exercise of this easement. Until such time as a building permit has been issued by the applicable local governing authority, the easement granted in this Section shall extend over the Building Envelope.

13.8. Easements Over Private Roadways

(a) Declarant hereby grants to the Association and to the Owner of each Homestead a non-exclusive right and easement of use and access over the private roadways within the Community ("Roadways"). Any Owner may extend his or her right of use and access over the Roadways to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation.

(b) Not later than the expiration of the Development and Sale Period, the Declarant will

transfer the Roadways to the Association as Common Area, subject to the easements for access described in this Charter, easements previously created for the benefit of property adjacent to the property described on Exhibits "A" and "B," and such additional easements as the Declarant deems appropriate. Use of such Roadways shall be subject to and in accordance with any rights and easements shown on the Plat of the Community and such reasonable Use Restrictions and Rules as the Association may adopt from time to time consistent with this Charter, the Plat, and any law, ordinance, or regulation governing the Community.

(c) The Declarant hereby reserves for itself, its agents, employees, successors, assigns, and other persons it may designate, an easement over the Roadways for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Community and for performing any other work within the Community which the Declarant deems reasonably necessary, in its discretion, or which the Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community. The Declarant hereby authorizes the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any Homestead to exercise this easement for access to such Homestead, subject to such rules as the Association may adopt; however, during the Development and Sale Period, the Declarant shall have the right to restrict use of all or portions of the Roadways and designate alternate access for such Persons, and to revoke such authorization and prohibit the use of the Roadways by Persons who violate the Governing Documents or any agreement with the Declarant.

(d) The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the Roadways for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery ve-

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hicles and personnel; utility providers, and for vehicles, equipment, and personnel providing garbage collection service to the Community; however, such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities. The Association shall have the right to limit access for garbage collection purposes to such days of the week as the Board may specify.

(e) Declarant reserves for itself and Declarant Affiliates a perpetual, non-exclusive easement of access to and use of the Roadways and Common Areas in connection with the marketing and sale of other communities which Declarant or any Declarant Affiliate may be developing and marketing, in order to show the Community as an example of the Declarant's developments.

(f) The existence of the easements described in this Section shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Community (subject to the conditions of any Development Approvals), provided that the Association at all times maintains systems and/or procedures to permit entry of Persons authorized to exercise the easements granted in this subsection without unreasonable interference or delay.

13.9. Easements Over Homesteads

(a) *Easements for Trails, and Pathways.* In addition to the easement established by Section 13.7, the Declarant hereby reserves for itself, and grants to the Association, each Owner, their respective successors and assigns, and their guests and invitees a non-exclusive right and easement over each Homestead, but not inside a Building Envelope, for the use and enjoyment of the pedestrian, horse, or non-motorized trails and pathways (except for emergency and maintenance purposes) located within the Community, if any. The right to use any trail or other pathway on a Homestead shall be subject to reasonable regulation and control by the Association.

(b) *Location of Easements.* Those areas within the Homesteads subject to the easement

rights described in Section 13.9(a) shall be as delineated by the trails and pathways when constructed. During the Development and Sale Period, any easement of access across a Homestead may be relocated on the Homestead by Declarant so long as it does not unreasonably interfere with the Owners use of the Building Envelope. Thereafter, the Association may relocate the easement with the consent of the Owner of the Homestead, which consent shall not be unreasonably withheld, conditioned, or delayed.

(c) *Easements for Grading and Snow Storage.* Declarant reserves for itself and grants to the Association and their respective employees, agents, and designees, a perpetual a non-exclusive right and easement over each Homestead, but not inside a Building Envelope, for the purpose of purpose of modifying the grade of any drainage channels on the Homestead to improve the drainage of water and for the storage of snow during the winter season.

13.10 Wildlife and Game Management

The Association, in conjunction with the requirement of the Colorado Division of Wildlife, has the right to permit game management activities within undeveloped areas and other property within the real property described in Exhibit "A" or "B," as it designates for such activities. Such designated areas are hereinafter referred to as "Hunting Preserves." **No hunting or other discharge of firearms shall be permitted within the Community except as specifically authorizes in accordance with this Section.**

Each Owner by purchasing a Homestead, and their respective heirs, successors, successors-in-title, and assigns, and any other Person that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Community, hereby (a) expressly assumes the risk of noise, personal injury, or property damage caused by authorized hunting or sport shooting activities within the Hunting Preserves; (b) specifically agrees not to object to or protest noises created by the discharge of firearms within such Hunting Preserves; (c) agrees that Declarant, the Association, and any

Easements

Declarant Affiliate, or any of their agents, shall not be liable to the Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy, based upon, due to, or arising from or otherwise related to such authorized hunting or shooting activities, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association, any Declarant Affiliate or any of their agents; and (d) agrees to indemnify and hold harmless Declarant, the Association, any Declarant Affiliate, or any of their agents, against any and all such claims by the Owner and Owner's tenants, guests, or invitees.

13.11 Easement for Construction, Maintenance, and Use of Joint Driveways

Declarant hereby reserves unto itself, its successors, assigns and designees, a nonexclusive easement over each Homestead for the purpose of constructing joint driveways as a part of the initial construction which provide access, ingress, and egress between the Homesteads served by the joint driveway and the road intersected by the joint driveway ("Joint Driveway"). A Joint Driveway consists of a "Trunk," meaning that portion which is intended to serve more than one Unit, and one "Stub" for each Homestead served thereby, meaning that portion that branches off of the Trunk to provide access to only one Homestead. A Joint Driveway shall be located within the boundaries of the areas designated for such purpose and designated as an Driveway Limited Common Area on the Plat and the area on which such Joint Driveway is constructed shall be the "Easement Area", as generally illustrated on Exhibit "D."

Each Owner of a Homestead located on a Joint Driveway shall have a perpetual, non-exclusive easement over and across that portion of the Easement Area that is:

(a) reasonably necessary for installation, metering, repair, and replacement of utilities to serve the Owner's Homestead; and

(b) reasonably necessary for direct access, ingress, and egress between the Owner's Homestead on a Joint Driveway and the road intersected by the Joint Driveway; provided, the exercise of this easement for the benefit of a particular Homestead on a Joint Driveway shall be restricted to the paved area of the Joint Driveway providing direct access to such Homestead and shall not give any Person the right to go upon any portion of the unpaved portions of any other Homestead, or upon the paved portions of any other Homestead that do not provide direct access to the benefited Homestead, without consent of the Owner thereof. The Association shall be authorized to promulgate rules and regulations governing the use of a Joint Driveway in order to maintain orderly traffic flow.

Declarant hereby grants to the Association, its assigns and designees, a nonexclusive easement over a Joint Driveway for the purposes of undertaking its maintenance responsibilities in accordance with the provisions of Section 6.4.

Chapter 14

Recreational Amenities

Various recreational and other facilities and amenities are located within the Community that are a part of the Common Area of the Association and ownership of a Homestead grants certain individuals the right to use them. This chapter explains the use right of those individuals who are entitled to use the "Recreational Amenities" (as defined below).

14.1. Recreational Amenities

The "Recreational Amenities" of Marabou are a part of the Association's Common Area and include a lodge, outfitters center, wellness center and spa, fitness facility, pool, theatre and activity center, horse barn, round pen, arena, and tack area, up to seven cabins which will be nestled along the Elk River, and any other amenities which are located or may from time to time be located in the Community. An amenity shall not be a part of the Recreational Amenities unless the instrument conveying such real property to the Association designates it as such.

14.2. Designated Users

(a) **Designated Users.** Notwithstanding anything to the contrary in this Charter, only the individual named as the "**Designated User**" for a Homestead, his or her "**Immediate Family Members**" and their guests may have access to or utilize the Recreational Amenities, subject to the terms and provisions of this Charter and the rules and regulations established by the Board ("**Recreational Amenities Rules**"). Subject to the provisions set forth below, each Homestead shall be assigned at least one Designated User.

(i) **Ownership by an Individual.** In the event a Homestead is owned by a single individual, which shall include ownership by of a Homestead by a husband and wife, the Designated User of such Homestead shall be the Owner of the Homestead, or in the case of a husband and wife,

such individual as they designated in writing to the Board.

(ii) **Joint Ownership and Ownership by a Legal Entity.** In the event any Homestead is owned by more than one individual (other than a husband and wife), the collective Owners of such Homestead shall designate in writing to the Board one individual who is at least 18 years of age to be the Designated User with respect to that Homestead.

In the event the Homestead owned by a legal entity, the Owner shall designate in writing to the Board one individual who is at least 18 years of age to be the Designated User with respect to the Homestead. Such Designated User must be either an officer, director, partner, or beneficiary of the Owner.

In the event a Homestead is owned by a legal entity other than a family trust, the Designated User must be approved by the Board; provided, so long as Declarant has the right to expand the Community in accordance with Chapter 18, the Declarant shall have the unilateral right to approve such Designated User. The Board or Declarant may require the submission of such information as they may deem necessary prior to approving or disapproving a Designated User.

A legal entity other than a family trust may elect to designate a second Designated User who must also be an officer, director, or partner of the Owner upon the payment of the fee established by the Board; provided, however, such fee shall not exceed \$10,000.00 ("**Second Designated User Fee**"). Such second designated user must also be approved in accordance with the provisions of this Section.

Once designated as a Designated User, the Designated User may not be changed by the legal

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entity unless such individual dies or is no longer a officer, director, partner, or beneficiary of the legal entity; provided, however, the Designated User of a legal entity other than one who dies or other than a family trust may not be replaced for a period of one year from the date so designated and only upon the payment of the Second Designated User Fee whether or not such Designated User is a second Designated User.

(iii) *Ownership as Tenants-in-Common.*

Each Owner of any Homestead specified by Declarant to be owned by Owners as tenants-in-common or otherwise in undivided interests where such Homestead is prohibited from being improved by deed or any other recorded covenant or restriction, such as, but not limited to, the Homestead identified as "Remainder Parcel 2" on the Plat, and the transferability of such interest is limited to that Owners Immediate Family Members shall be designated as a Designated User.

(b) *Immediate Family Members.* In addition to the Designated User, the spouse, or one other adult designated by such Designated User who resides in the household of such Designated User, the children, grandchildren and parents of each shall be entitled to use the Recreational Amenities.

14.3. Good Standing; Discipline

(a) *Good Standing.* A Designated User or Immediate Family Member shall cease to be in "good standing" upon the occurrence of any of the following:

- failure to pay to assessments or any other use fees or charges, or any installment thereof, on or before the due date;
- failure to accompany a guest, when required, while using the Recreational Amenities;
- termination of ownership of a Homestead or failure to meet the requirements to be designated as a Designated User;

- violation of the Governing Documents;
- conviction of a felony or of any crime involving moral turpitude, or a determination by the Board that the person was convicted of a felony and failed to disclose it to the Board prior to becoming a Designated User; or
- commission of any act or acts which the Board determines to be inconsistent with the Governing Documents or the general decorum or familial atmosphere of the use of the Recreational Amenities, or to be detrimental to or likely to endanger the welfare, safety, or harmony of the Community, an Owner, or any Designated User, Immediate Family Member, guest, or employee working at the Recreational Amenities.

THE BOARD'S DETERMINATION IN ACCORDANCE WITH THIS SECTION THAT ANY PERSON OR ENTITY IS NOT IN GOOD STANDING SHALL BE FINAL.

(b) *Discipline.* If the Board determines, in accordance with the procedures set forth below, that any Designated User or Immediate Family Member is no longer in good standing, the Board may impose such sanctions as it deems appropriate. Such sanctions may include, but need not be limited to, monetary fines, reprimand, temporary suspension of access and use privileges to the Recreational Amenities. Any temporary suspension of membership privileges shall be for such period as Club Operator deems appropriate; provided, however, such suspension shall not exceed a period of six consecutive months. The Owner of the Homestead of a suspended Designated User or Immediate Family Member shall remain fully liable for all assessments and fees and charges accruing during any period of suspension.

The Board's determination that an Immediate Family Member is not in good standing shall be cause for suspension of the Immediate Family Member's privilege of using the Recreational

Private Amenities

Amenities but shall not affect the privileges of the Designated User or other Immediate Family Members. The Board's determination that a Designated User is not in good standing shall be cause for suspension of the privileges of the Designated User's Immediate Family Members, however, it shall not affect the privileges of the other Designated User designated by the Owner of such Homestead, if one has been designated.

A person whose use privileges are suspended pursuant to this Section shall not be entitled to use the Recreational Amenities as the guest of another Designated User, Immediate Family Member, or otherwise.

Except as set forth below, the Board shall not suspend the rights of a Designated User or any Immediate Family Member without prior notice to the Designated User specifying the basis for a belief that the Designated User or Immediate Family Member is not in good standing (as defined above), and an opportunity for a hearing on the matter.

If the Designated User or Immediate Family Member requests a hearing in writing within 10 days after receipt of such notice, the Board shall set a time and date for a hearing and shall provide at least 10 days' prior written notice thereof to the Designated User. The hearing shall be held before either the Recreational Amenities Discipline Committee ("**Discipline Committee**") which shall be convened from time to time for the sole purpose of hearing such matters. The Discipline Committee shall be composed of not less than three nor more than five Owners who shall not be officers, directors, or employees of the Association. At such hearing:

- The Designated User or Immediate Family Member may make a statement and present any evidence or witnesses supporting the position that such person remains in good standing or should not be sanctioned. Neither the Association nor the charged person shall have counsel present at any such hearing.
- Only the Association's representative, the charged person, and those persons who, in the discretion of the Discipline Committee, have relevant information to share concerning the charges or the good standing of the charged person, may attend.
- The Association's representative may present its arguments for sanctions against the charged person. The Association's representative shall name the complainants and witnesses who are to testify regarding the charged person's conduct and in support of the Association's charges.
- The charged person shall have an opportunity to be heard orally or in writing, to present witnesses, produce any statement or evidence on his or her behalf, confront the Association's witnesses, and refute the claims of complainants.
- The Association and the charged person each shall be afforded a reasonable opportunity to present relevant matters. The charged person shall have the same amount of time to present its matters and confront the Association's witnesses and complainants as the Association uses to present the matters it deems relevant; however, neither presentation shall exceed one hour, unless the Discipline Committee, in its sole discretion, determines that more time is necessary to present relevant matters. The amount of time that the Association uses to pose questions to those in attendance shall not be charged against the time allotted to either.
- The Discipline Committee shall notify the alleged violator of its determination and the sanction, if any, to be imposed, within 10 days following the date of such hearing. In the discretion of the Board, access and use membership privileges

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may be suspended pending the outcome of such hearing.

Notwithstanding the requirement for notice and hearing set forth above, the Board may immediately suspend the rights of a Designated User or any Immediate Family Member if the Board determines, in its sole discretion, that such person's conduct, if repeated, would pose a threat to the welfare and safety of the Community or its Owners, Designated Users, any Immediate Family Member, guest, or employee, or that the time period involved in complying with the procedure set forth above would render such hearing procedure ineffective to address or prevent a recurrence of such person's conduct within such time period. In such event, the Designated User or Immediate Family Member involved shall have the right to appeal the suspension to the Discipline Committee by submitting a written notice of appeal which is received by the Board within 10 days after the date of suspension. If such a suspension is appealed, the Board shall comply with the applicable notice and hearing procedures set forth above. If such a suspension is not appealed, the Discipline Committee shall review the facts surrounding the suspension to determine the length of the suspension or if further disciplinary action is necessary in its sole discretion.

14.4. Use Fees and Charges

In addition to the assessments levied in accordance with Chapter 12, a Designated User shall be responsible for the payment of any fees or charges imposed by the Board with respect to use of the Recreational Amenities incurred by the Designated User, his or her Immediate Family Members and guests. Such fees and charges shall be paid in accordance with the procedures established by the Board and if not paid in accordance with such procedures shall be assessed as a Specific Assessment against the Homestead designating such Designated User.

14.5. Recreational Amenities Rules

Declarant has or will prepare the initial Recreational Amenities Rules. The Declarant shall have sole and full authority to amend the Recreational Amenities Rules during the Development and Sale Period. Thereafter, the Recreational Amenities Rules may be amended by the Board.



Chapter 15

Disclosures and Waivers

This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this chapter.

15.1. Safety and Security.

Each Owner and occupant of a Homestead, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Marabou. The Association may, but shall not be obligated to, maintain or support certain activities within Marabou designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association, the Declarant, and Declarant Affiliate shall not in any way be considered insurers or guarantors of safety or security within Marabou, 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 systems or measures, including security monitoring systems or any mechanism or system for limiting access to Marabou, 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 shall be responsible for informing any tenants and other occupants of such Owner's Homestead that the Association, its Board and committees, and the Declarant and Declarant Affiliates are not insurers or guarantors of security or safety and that each Person within Marabou assumes all risks of personal injury and loss or damage to property, including Homesteads and the contents

of Homesteads, resulting from acts of third parties.

15.2. Changes in Master Plan.

Each Owner acknowledges that Marabou is a master planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, any protest, challenge, or other form of objection to changes in uses or density of property within Marabou, or changes in the Master Plan as it relates to property outside Marabou, without the Declarant's prior written consent.

15.3. View Impairment.

Neither the Declarant, nor any Declarant Affiliate, nor the Association, guarantee or represent that any view over and across the Homesteads or any open space within the Community, will be preserved without impairment. The Declarant, Declarant Affiliates, and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

15.4. Notices and Disclaimers as to Community Systems and Services.

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Declarant, Declarant Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System or Service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in

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Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

The Owner of each Homestead shall be responsible for ensuring that the dwelling on such Homestead is pre-wired to connect to any Community System installed by or at the request of the Declarant pursuant to Section 19.7. If such wiring is installed by a party other than the provider of the Community System, the Owner shall contact the provider of the Community System upon completion of such installation and arrange for the provider of the Community System to inspect the wiring to ensure compatibility with the Community System. If authorized by the Declarant, the provider of the Community System may charge the Owner of the Homestead a reasonable fee for such inspection. If it is determined that the wiring is not compatible, the Owner of the Homestead shall promptly arrange for such wiring to be replaced with wiring that is compatible with the Community System.

15.5. Natural Conditions

(a) The Community contains a number of natural and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of a Homestead and every person entering the Community (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. The Association, the Declarant, or the members, managers, partners, affiliates, officers, directors, agents, or employees of either of the foregoing shall not have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

(b) The natural areas described in Section 15.5(a) above may also contain bodies of water, muddy areas, calving and fawning areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Homestead shall enter upon, or permit their guests or any other person acting on their behalf to enter upon or disturb such areas in any way without the Association's prior written approval.

15.6. Conservation Areas

The Community contains environmental conservation areas, many of which are adjacent to Homesteads and other property within the development. These areas have been set aside by Declarant with the concurrence and approval of various local and state regulatory agencies for their preservation, management, and protection. Conservation easements either have been or may be placed on these areas, including on the Common Area and/or open space, with the intent of setting aside these areas in perpetuity for their preservation and conservation. In the furtherance of that goal, Declarant may develop a site mitigation and management plan that may incorporate any terms and conditions that the regulatory agencies may have established for these conservation areas. Any costs associated with such mitigation and management plan shall be treated as an Association Common Expense.

15.7. Agricultural and Ranching Operations

The Association and/or Ranch Operator has a right to conduct agricultural and ranching operations on the Common Area as described in Section 13.1. The funds received from the Ranch Operator or the sale of such crops and other products shall be applied to the operating costs of the Association in order to reduce such costs.

15.8. Limitations on Use of Water for Irrigation

The Owner of a Homestead shall comply with any water use restrictions declared by any

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governmental or quasi-governmental entity with jurisdiction over Marabou. In addition, the Association shall have the right, in its sole and absolute discretion, subject to any applicable law, to impose greater limitations than those imposed by such entity with respect to the use of water for the irrigation of a Homestead within Marabou. Such limitation imposed by the Association may only be enforced by the Association.



Chapter 16

Ranching Operations

Marabou is composed of irrigated hay meadows, dry land farming, and upland grazing areas. It is the intent of Declarant to continue such agricultural and ranching operations over the Community excluding those areas within a Building Envelope. The ranching operations may be a part of the Community undertaken by the Association or leased to neighboring operators. Regardless, such operations will be located within and in close proximity to the Community.

16.1. Acknowledgment of Ranching Operations

Property situated within the Community may be used for ranching purposes, including, without limitation, maintaining and feeding cattle, horse breeding, and such other operations as the Association determines in its discretion ("**Ranching Operations**"). In the course of such Ranching Operations, sights, odors, and noises, including those generated by machinery and equipment, may emanate from such property. Such activities and noise is likely to go on 24 hours a day, seven days a week. The Declarant, the Association, and the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing shall not have any duty to take action to abate such sights, smells, or noise and none of them shall be liable for any claim of damages or injury to any Person or property arising out of or related to sights, odors and noises resulting from the Ranching Operations.

In addition, such areas may be off-set by an electric fence, which could cause injury to persons or pets or damage to property coming in contact with it. The Declarant, the Association, and the members, partners, affiliates, officers, directors, agents, or employees of any of the foregoing shall not have any liability for personal injury or property damage resulting from contact with such electric fences or entry into such areas.

16.2. Control of Ranching Operations

The Ranching Operations are controlled by the Association and/or any other Ranch Operator. The Association may employ and compensate an individual as the "Ranch Manager" to oversee all of the Ranching Operations. During the Development and Sale Period, the Declarant's consent shall be required prior to a Person being designated as a Ranch Operator or the Ranch Manager. The expenses associated with such Ranch Manager, including his or her salary and benefits, shall be a part of the Association's Common Expenses. No Owner is permitted to undertake any Ranching Operations on any portion of the Community, including that portion of a Homestead outside of the Building Envelope. Such prohibited Ranching Operations by Owners specifically include, but are not limited to, the raising, breeding, or keeping of horses, cattle, pigs, or any other livestock or chickens, turkeys, or any other poultry. All Ranching Operations shall be undertaken in accordance with the "Ranching Rules," if any, promulgated by the Association. Such Ranch Rules may be promulgated by the Association in its discretion, subject to any instrument or agreement conveying any rights to a Ranch Operator, and need not be approved in accordance with the provisions of Section 7.3. The Ranch Manager and the Ranch Operator shall conduct all Ranching Operations in compliance with all applicable local, state, and federal laws and regulations.

16.3. Right of Access

The Ranch Operator undertaking any Ranching Operations and their respective agents, affiliates, employees, assigns, contractors, licensees, and lessees shall have a perpetual right and non-exclusive easement of access and use over all roadways located within the Community reasonably necessary to travel to and from the entrance to the Community, to and from any por-

Ranching Operations

tion of Marabou used for Ranching Operations, and over those portions of the Community (including Common Areas and Homesteads, but not through a Building Envelope) reasonably necessary to undertake any Ranching Operations. Unless otherwise provided in this Charter, the Association, its employees, agents, and managers, as well as any Person granted a license pursuant to this chapter shall not enter the Building Envelope, or any Improvements thereon, without the Homestead Owner's permission. No Owner may interfere or otherwise obstruct the access to, or use of, the property designated for Ranching Operations. No Owner may cut, remove, damage, or destroy any agricultural products cultivated on any portion of the Community including such Owner's Homestead.



Chapter 17

Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Homestead, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Homesteads in Marabou. The provisions of this Chapter apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

17.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Homestead to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Marabou or which affects any Homestead on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Homestead subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Homestead or the Owner or occupant which is not cured within 60 days.

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

17.2. No Priority.

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Homestead in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.3. Notice to Association.

Upon request, each Owner shall furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Homestead.

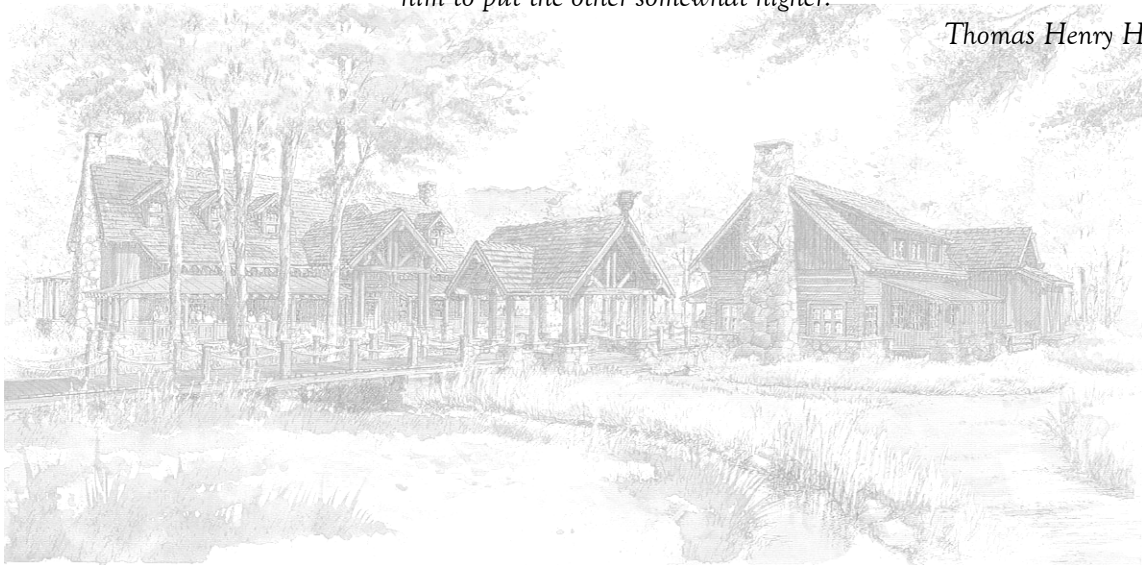
17.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

PART FIVE: COMMUNITY DEVELOPMENT

The rung of a ladder was never meant to rest upon, but only to hold a man's foot long enough to enable him to put the other somewhat higher.

Thomas Henry Huxley



Chapter 18

Expansion of the Community

It is not practical to develop, market, and sell a community the projected size of Marabou all at one time. Therefore, the Declarant intends to develop the Community in phases to meet demand. This chapter establishes procedures by which the Declarant and the Association may expand the Community.

18.1. Expansion by Declarant.

The Declarant reserves the right to create up to a total of 79 Homesteads within the Community, including the 61 Homesteads created within the property described on Exhibit "A," and up to 1 Homestead within the property described as "Specific Expansion Property" and up to 17 Homesteads within the property described as "General Expansion Area" on Exhibit "B." Subject to this limitation, the Declarant may, from time to time, submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

The Declarant's right to expand Marabou under this Section expires when all property described in Exhibit "B" has been submitted to this Charter or 40 years after this Charter is recorded, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Declarant Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

Nothing in this Charter shall require the Declarant or any successor to submit additional property to this Charter or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Declarant may submit different parcels of property to this Charter at different times. The Declarant gives no assurances as to

the boundaries of the parcels that may be submitted to this Charter, or as to the order in which the Declarant may submit different parcels of property to this Charter.

18.2. Expansion by the Association.

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Owners entitled to cast more than 67% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplement.

18.3. Additional Covenants and Easements.

Any Supplement that the Declarant records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

Expansion of the Community

18.4. Effect of Filing a Supplement.

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.



Chapter 19

Additional Rights Reserved to the Declarant

This chapter reserves various rights to the Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Declarant's development and sale of property in the Community, to enable the Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Declarant.

19.1. Special Development Rights.

In addition the rights specifically reserved to the Declarant under Chapter 18 with respect to expanding the Community, the Declarant reserves for itself and any Declarant Affiliate the right, during the Development and Sale Period, (collectively referred to as "**Development Rights**") to:

(a) create Homesteads, Common Areas, and Limited Common Areas, and to designate roadways, within any portion of the Community which it owns;

(b) combine any Homestead or Homesteads which it owns in order to create larger Homesteads, Common Areas, and/or Limited Common Areas, subject to the limitation on the number of Homesteads in Marabou set forth in Section 18.1;

(c) convert any Homestead which it owns into Common Area, Limited Common Area, or roadways;

(d) adjust the boundaries of any Common Area or Limited Common Area; and

(e) amend this Charter or any Supplement to withdraw unimproved property from the Community and the coverage of this Charter.

The Declarant may separately exercise such right as to each portion of the Community which

is the subject of a separately recorded Plat; however, the Declarant may not exercise such right with respect to any property on a particular Plat after a Homestead shown on such Plat has been conveyed to a Person other than a Declarant Affiliate. "Unimproved" means that no permanent structure has yet been completed on the property. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

19.2. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Homesteads. Such permitted facilities and activities shall include business offices, signs, model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas, including within courtyards enclosed by building frontages or in parking courts.

19.3. Access for Development Purposes.

During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and roadways within the Community for the purpose of:

Additional Rights Reserved to Declarant

(a) exercising any rights reserved to the Declarant pursuant to this Charter, including the rights set forth in Section 19.1; and

(b) making, constructing, and installing any improvements indicated on the Plat of the Community and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate.

19.4. Right to Approve Changes in Marabou Standards.

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Declarant.

19.5. Additional Covenants and Restrictions.

During the Development and Sale Period, no one other than the Declarant or a Declarant Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

19.6. Exclusive Rights to Use Name of Development.

No Person other than the Declarant or a Declarant Affiliate shall use the name "Marabou" or any derivative of such name or in any logo or depiction associated with Marabou in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "Marabou" in printed or promotional matter where such term is used solely to specify that particular property is located within Marabou, and the Association shall be entitled to use the word "Marabou" in its name.

19.7. Community Systems.

The Declarant reserves for itself, Declarant Affiliates, and their respective successors and assigns, a perpetual right and easement over all of the property in Marabou to install and operate such Community Systems as the Declarant, in its

discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Declarant also has the right to charge or authorize any provider to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

The Declarant may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Community Systems for all Homesteads as a Common Expense. If particular services or benefits are provided to particular Owners or Homesteads at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a Service Area Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

19.8. Easement to Inspect and Right to Correct.



The Declarant, or someone it designates, may enter any Owner's property to inspect and correct problems with the Homestead. The Declarant must give the Owner of the Homestead prior notice, and if it necessary to enter an enclosed structure on the Homestead, obtain the Owner's prior consent, unless it is an emergency.

The Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Marabou, including Homesteads, and a perpetual

Additional Rights Reserved to Declarant

nonexclusive easement of access throughout Marabou to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Homestead shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Homestead.

19.9. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Marabou in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

19.10. Water Rights.

The Declarant and Declarant Affiliates reserve for themselves and their respective successors, assigns, and designees, all rights which any of them hold on the date this Declaration is recorded or thereafter acquire to surface water and storm water runoff originating within or running through Marabou, and each Owner agrees that the Declarant and Declarant Affiliates shall retain all such rights. **All surface and storm water shall be captured and used in accordance with all applicable Colorado laws regarding such surface and storm water capture and use.** No Person other than the Declarant, Declarant Affiliates, and their respective successors, assigns, or designees shall claim, capture, pump, or collect rainwater, surface water or storm water runoff from any portion of Marabou without prior written permission of the Declarant or Declarant Affiliate to which such rights are reserved. The Declarant

and Declarant Affiliates or their designees may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside Marabou and may require Owners and occupants of Homesteads to participate in such programs to the extent reasonably practical. No Owner or occupant of a Homestead shall have any right to be compensated for water claimed or reclaimed from Homesteads. The Board shall also have the right to establish restrictions on or prohibit outside use of potable water within Marabou.

19.11. Right to Transfer or Assign the Declarant's Rights.

Any or all of the Declarant's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Declarant signs. The foregoing sentence shall not preclude the Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Charter where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

19.12. Termination of Rights.

The Declarant may exercise any and all of the rights reserved to the Declarant under this Charter with respect to different portions of the Community at different times. If a Development Right is exercised with respect to any portion of the Community, it need not be exercised with respect to all or any other portion of the Community. No assurances are made as to the boundaries of any property as to which the Declarant may exercise such rights, or as to the order in which different portions of the Community may be subjected to the exercise of such rights. Except as otherwise specified above, the rights

Additional Rights Reserved to Declarant

reserved to the Declarant in this Chapter shall terminate on the earlier of (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity has ceased.



PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

There are many ways of going forward, but only one way of standing still.

Franklin D. Roosevelt



Chapter 20

Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between owners or between an owner and the Association, the Declarant or others involved in the Community. This commits the parties to any such a dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

20.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) **Bound Parties.** The Declarant, Declarant Affiliates, the Association and its officers, directors, and committee members, all Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this Chapter (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 20.2 in a good faith effort to resolve such Claim.

(b) **Claims.** As used in this Chapter, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 20.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of community standards);

(iii) any suit that does not include the Declarant, a Declarant Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 20.2; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 20.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter.

Dispute Resolution and Limitation on Litigation

have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

20.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by Owners entitled to cast 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Declarant Control Period;

(b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

20.4. Limitation of Damages.

All Bound Parties agree that, in any lawsuit arising out of a Claim subject to the procedures set forth in Section 20.2, any damage award shall be limited to the amount of any actual economic loss suffered by the prevailing party and shall not include punitive damages or damages for pain and suffering, except that punitive damages shall be permitted in the case of a lawsuit arising out of a violation of the Governing Documents.

Chapter 21

Changes in the Common Area

Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of, or rights to use, Common Area. This chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.

21.1. Assignment and Reassignment of Limited Common Area.

(a) **Assignment.** The Board may designate any portion of the Common Area as Limited Common Area upon approval of the Board, the consent of Owners representing at least 75% of the total votes in the Association, and the consent of Owners of a majority of the Homesteads to which the Board proposes to assign such Limited Common Area, except that no such assignment shall have the effect of denying any Owner access to such Owner's Homestead or recreational facilities, if any, within the Common Area to which the Owner had access to prior to the reassignment without such Owner's consent. As long as the Declarant owns any property subject to this Charter or which may become subject to this Charter in accordance with Section 18.1, any such assignment shall also require the Declarant's written consent.

(b) **Reassignment.** Limited Common Area, once assigned, may be reassigned only with the consent of the Owners of the Homesteads affected by such reassignment.

(c) **Use by Others.** Upon approval of a majority of Owners of Homesteads to which any Limited Common Area is assigned, the Association may permit Owners of other Homesteads to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

21.2. Condemnation.



A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 21.4, 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 Declarant, during the Development and Sale Period, and Owners entitled to cast at least 67% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring damaged improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 21.4.

Changes in the Common Area

21.3. Partition.



Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Section 21.4.

21.4. Transfer, Mortgaging, or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Routt County, Colorado or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

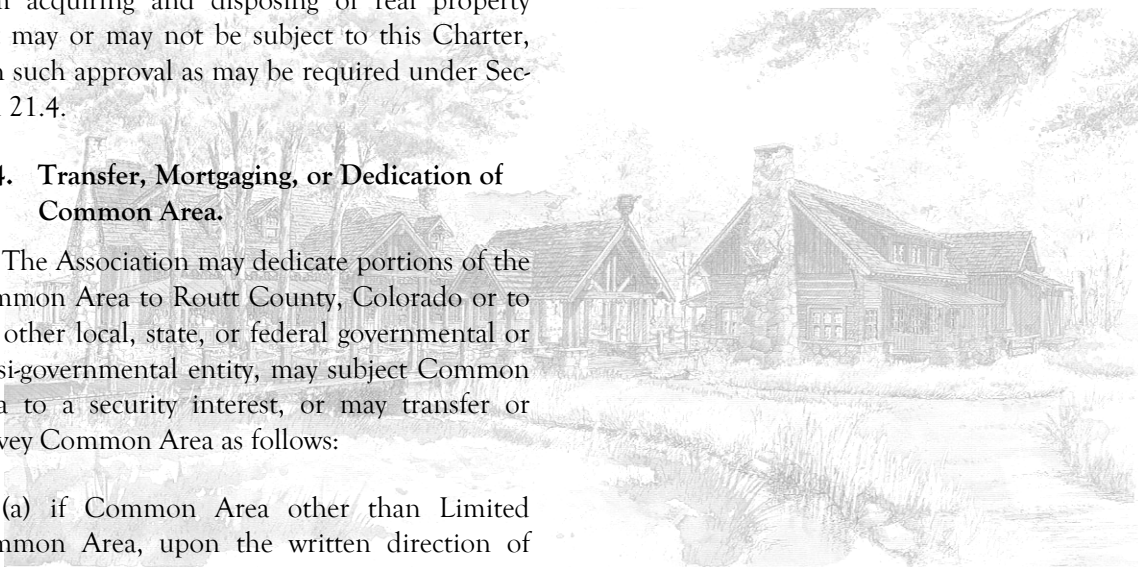
(a) if Common Area other than Limited Common Area, upon the written direction of Owners representing at least 67% of the total votes in the Association and, during the Development and Sale Period, the written consent of the Declarant; and

(b) if Limited Common Area, upon written approval of Owners of at least 67% of the Homesteads to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Homesteads to which the Lim-

ited Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Homestead of rights of access or support.



Chapter 22

Termination and Amendment of Community Charter

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which either the Declarant or the Owners as a group may amend this Charter to address such changes.

22.1. Term and Termination.

This Charter shall have perpetual duration, unless terminated in the manner provided in §38-33.3-218 of the Act by agreement signed by Owners of Homesteads to which at least 80% of the total votes in the Association are allocated. If Colorado law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Charter shall be extended automatically at the expiration of such period for successive periods of 20 years each, unless terminated as provided above.

This Section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

22.2. Amendment.

(a) *By the Declarant.* The Declarant may unilaterally amend this Charter (i) to correct clerical, typographical or technical errors; (ii) to comply with any applicable governmental statute, rule, regulation, or judicial determination; (iii) to comply with the requirements, standards or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or (iv) to assign Common Areas as Limited Common Areas pursuant to Section 21.1; (v) as necessary to exercise the rights reserved to the Declarant under Section 18.1 and Section 19.1; and (vi) otherwise as permitted by the Act.

(b) *By the Association.* The Association may amend this Charter (i) to assign Common Areas and Limited Common Areas pursuant to Section 21.1; (ii) to relocate boundaries between Homesteads upon application of the Owner(s) of the affected Homesteads pursuant to the Act; (iii) to withdraw any portion of the Community subject to withdrawal under Section 19.1 from the coverage of this Charter upon request of the person taking title following foreclosure of a lien or encumbrance on such property provided such lien and encumbrance has priority over the Charter; and (iv) otherwise as permitted or required by the Act.

Any amendment pursuant to this Section shall be prepared, executed, certified and recorded on behalf of the Association by any officer designated for such purpose or, in the absence of such designation, by the Association's President.

(c) *By the Owners.* Except as otherwise specifically provided above or in the Act, this Charter may be amended only by:

(i) the affirmative vote or written consent, or any combination thereof, of Owners of Homesteads to which at least 67% of the total votes in the Association are allocated; and

(ii) the affirmative vote or written consent, or any combination thereof, of Owners of Homesteads to which at least 67% of the total votes held by Owners other than the Declarant are allocated, if the amendment creates or expands "special declarant rights," as defined in the Act, increases the number of Homesteads permitted to be created in accordance with Section 18.1, changes the boundaries of any Homestead, or changes the votes or the proportional share of liability for Association expenses allocated to any Homestead; and

Termination and Amendment of Community Charter

(iii) during the Development and Sale Period, the Declarant's written consent.

(d) **Validity and Effective Date.** Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 17 shall be met, if applicable.

If an Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. An amendment shall be indexed in the grantee's index in the name of the Community and the Association and in the grantor's index in the name of every person executing the amendment.

No action to challenge the validity of an amendment may be brought more than one year after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

(e) **Exhibits.** Exhibits "A" and "B" are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to Sections 22.1 and 22.2. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Charter that refer to such exhibits.



20____.

ELK RIVER PARTNERS LLC, a Georgia
limited liability company

By: _____

Name: Bruce Jeffrey Temple

Its: President

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by Bruce Jeffrey Temple, as the President of Elk River Partners LLC, a Georgia limited liability company.

Witness my hand and official seal.

Notary Public

My Commission expires: _____

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EXHIBIT "A"

Land Initially Submitted

Marabou Filing No. 1 as filed for record in File No. ____ of the Routt County, Colorado records.



EXHIBIT "B"

Land Subject to Annexation

Specific Expansion Property:

A parcel of land located in the NE ¼, NE ¼ Section 28 and the NW ¼, NW ¼, Section 27, Township 7 North, Range 85 West of the 6th PM, Routt County, Colorado, also known as No. 43441 Elk Run, Steamboat Springs, Colorado, 80487.

General Expansion Area:

Any and all real property lying and being within a two-mile radius of the boundaries of the property described in Exhibit "A" as expanded in accordance with the provisions of Section 18.1.

Note to clerk and title examiners:

This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 18.

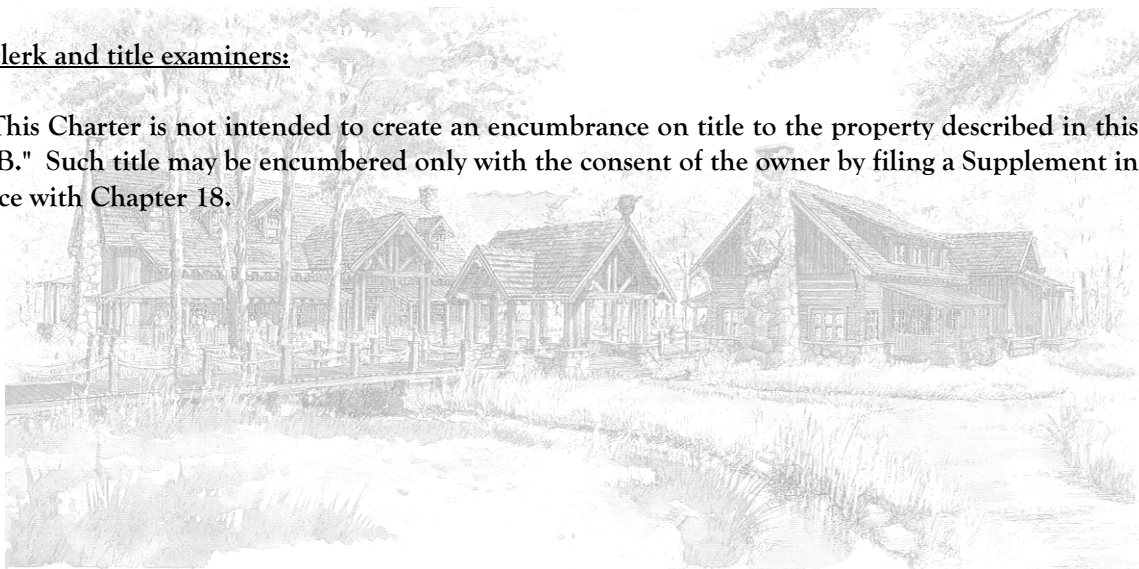


EXHIBIT "C"

Initial Rules

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Chapter 5, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Homestead under one set of circumstances, the same thing may be disapproved for another Homestead under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all property subject to this Charter until such time as they are modified pursuant to the Charter.

1. **General.** The property subject to this Charter shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, or business offices for the Declarant or the Association) consistent with this Charter and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Marabou:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages or other locations screened from view of adjacent property in a manner approved by the Reviewer pursuant to Chapter 5; provided, construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Homestead or the Common Area;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Homestead. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Homesteads shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. All pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the Homestead and shall be confined each night and not permitted to roam free. All pet owners shall be responsible for immediately removing and disposing of any pet waste on Common Areas. Pets shall be registered, licensed, and inoculated as required by law. Owners shall be responsible for ensuring all waste deposited by their pets is collected from their Homestead and the Common Area. No pet food shall be left on the outside portion of any dwelling on a Homestead;

(c) Any activity that emits foul or obnoxious odors outside the Homestead or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Homesteads. **The use of motorized vehicles on trails within the Community is prohibited;**

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Homestead;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Homesteads;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Homestead;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Homesteads, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(k) Discharge of firearms except in accordance with the provisions of Section 13.10; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(l) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Homestead for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Chapter 5;

(m) Woodpiles, brush, or other materials, unless they are stored in a manner not to be attractive to rodents, snakes, or other animals and to minimize the potential danger from fires. No open fires shall be lighted or permitted within Marabou, except in a contained outdoor fireplace or barbecue unit while attending and in use for cooking purposes or within a safe and well designed interior fireplace. All Owners and occupants of Marabou must maintain their yards and underbrush in a manner that minimizes the risk of fire. Due to the fact that Marabou is located in an area susceptible to wildfires, the Association and governmental entities may promulgate regulations concerning fire to minimize cataclysmic damage to dwellings and natural vegetation that can be caused by fire;

(n) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Marabou or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(o) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Homestead without prior approval pursuant to Chapter 5;

(p) Any modification of any thing, permanently or temporarily, on the outside portions of the Homestead, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5 of the Charter. This shall include, without limitation, signs, basketball hoops, and swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming

pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Homesteads, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Notwithstanding the above, the Declarant and Declarant Affiliates shall have the right to place one or more antennae or towers for radio or telecommunications on property they own or lease in Marabou pursuant to their rights reserved in Section 15.6.

3. **Prohibited Conditions.** The following shall be prohibited at Marabou:

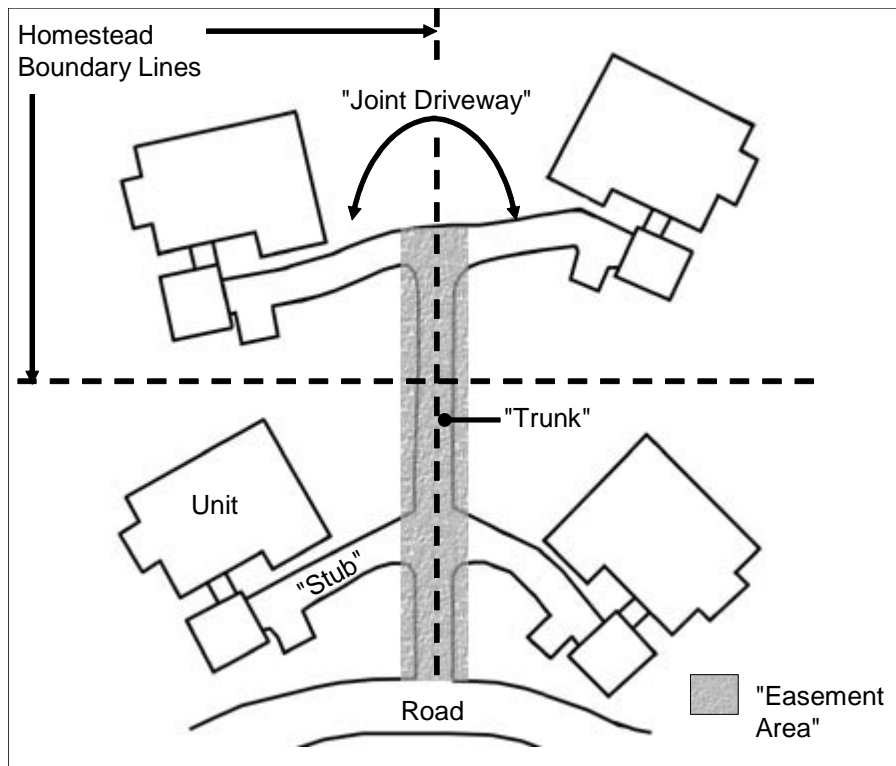
(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Marabou;

(b) Structures, equipment, or other items on the exterior portions of a Homestead which have become rusty, dilapidated, or otherwise fallen into disrepair; and

(c) Capturing, killing, or trapping wildlife within the Community or property owned, managed, or maintained by the Association, except in accordance with the provisions of Section 13.10 or under circumstances imposing an imminent threat to the safety of Persons or pets.

EXHIBIT "D"

Joint Driveways



**RESOLUTION OF THE
THE MARABOU OWNERS ASSOCIATION, INC.
TO ENACT RESPONSIBLE GOVERNANCE POLICIES**

The Marabou Owners Association, Inc., a Colorado nonprofit corporation (the “Association”), for the purpose of complying with C.R.S. §38-33.3-209.5, hereby adopts the following responsible governance policies. Unless otherwise defined in these governance policies, terms defined in the Community Charter for Marabou (the “Charter”), the Association’s Articles of Incorporation (“Articles”), the Association’s By-Laws (“By-Laws”), and Rules and Regulations of the Association (“Rules and Regulations”) shall have the same meaning herein. The Charter, Articles, By-Laws, and Rules and Regulations shall hereafter be collectively referred to as the “Governing Documents.”

A. Procedures for the Adoption and Amendment of Policies, Procedures and Rules.

Under Section 3.15 of the By-Laws and Sections 2.2 and 7.3 of the Charter, the Association’s Board of Directors has the authority and power to make, amend and enforce Rules and Regulations as deemed needed to administer the Association’s affairs, perform the Association’s responsibilities and exercise the Association’s rights as set forth in the Governing Documents. Furthermore, Section 8.1 of the Charter states that each member of the Association and his guests, invitees, tenants and employees shall be bound by and shall comply with the Governing Documents, and failure to do so may result in sanctions and other various penalties.

In accordance with the above referenced authority, and for the purpose of adopting a standard procedure to be used when adopting policies, rules, regulations and guidelines (hereafter “Policies” or “Policy”), the Association hereby incorporates by reference here, and adopts the rulemaking procedures as set forth in the Section 7.3 of the Association’s Charter. *See* pp. 24-25, Charter recorded at Reception #638976.

B. Policy Regarding Board of Directors Conflicts of Interest

1. As used in this Policy, “conflicting interest transaction” means: a contract, transaction, or other financial relationship between the Association and a member of the Association’s Board (“Director”), or between the Association and party related to a Director, or between the Association and an entity in which the a Director is a director or officer or has a financial interest.

2. As used in this Policy, “Officer” shall mean any person designated as an officer of the Association or any person to whom the Board delegates responsibilities under Article 38-33.3 of the Colorado Revised Statutes, including, without limitation, a managing agent, attorney or accountant employed by the Board.

3. As used in this Policy, “party related to a Director” shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the Director

or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a director, officer, or has a financial interest.

4. No loans shall be made by the Association to its Directors or Officers. Any Director or Officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

5. No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by an owner or by or in the right of the Association, solely because the conflicting interest transaction involves a Director of the Association or a party related to a Director or Officer or an entity in which a Director is a director or officer or has a financial interest or solely because the Director is present at or participates in the meeting of the Association's Board or of the committee of the Board that authorizes, approves, or ratifies the conflicting interest transaction or solely because the Director's vote is counted for such purpose if:

(a) the material facts as to the Director's relationship or interest as to the conflicting interest transaction are disclosed or are known to the Board or the committee, and Board or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors are less than a quorum; or

(b) the material facts as to the Director's relationship or interest and as to the conflicting interest transaction are disclosed or known to the owners entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the owners entitled to vote thereon; or

(c) the conflicting interest transaction is fair as to the Association.

6. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

C. Assessment Collection Policy

The Owner of each Homestead shall pay the Owner's share of the Common Expenses allocated to such Homestead as Base Assessments, Service Area Assessments, and the full amount of any Special Assessments assessed specifically against such Owner's Homestead.

The Association shall send notices of general (regular) and special assessments and other charges via invoices. All invoices are due and payable on the date or dates specified in the invoice, or if payment date(s) are not specified, within fifteen (15) days after the date of the invoice. Assessments or other charges not paid within fifteen (15) days after the due date shall be considered past due and delinquent and the Association may assess a late payment fee of \$50.00 and interest on the past due amount from the date due until paid at a rate of eighteen percent (18%) per annum pursuant to Section 12.6 of the Charter, and Section 8.4(b)(v) of the By-Laws.

All checks returned by the Owner's bank for any reason whatsoever, including, but not limited to, insufficient funds, shall incur a \$30.00 returned check charge. All late fees, interest, returned check fees and costs of collection, including court costs and attorneys' fees, shall be a Special Assessment against the delinquent Owner and such Owner's Homestead.

Collection Process:

1. After any assessment or other charge becomes more than fifteen (15) days delinquent, the Association may send a written notice of non-payment to the Owner.

2. After any assessment or other charge becomes delinquent, the Association may record a statement of lien against the Owner and the Owner's Homestead in the Routt County real property records, for the delinquent amount, late payment fees, interest and costs of collection. The Association's failure to record any such statement of lien or any error or omission in the content of such statement of lien shall not defeat such lien of the Association nor affect its priority.

3. After any assessment or other charge becomes delinquent, the Association may refer the matter to the Association's attorney who may file a lawsuit against the Owner or institute a foreclosure action against the Owner's Homestead to collect all amounts due to the Association. The cost of any lawsuit and/or foreclosure action shall include the costs of collection, including attorney fees. Under Section 8.2(a)(ii) of the Charter, the Association may also suspend the delinquent Owner's voting rights in the Association after sending a written notice ("Suspension Notice"). The Owner's voting rights in the Association may be suspended three (3) days after mailing of the Suspension Notice and the suspension shall remain in effect until the Owner pays all of his outstanding balance owed to the Association. The foregoing Policy shall in no way operate to limit the Association's other and additional rights as set forth in the Association's Governing Documents and any applicable law.

D. Policy Regarding the Inspection and Copying of Documents.

The Association shall permanently retain the following records as required by Colorado law: (1) Minutes of all Board and Owner meetings, (2) all actions taken by the Board or Owners by written ballot in lieu of a meeting, (3) all actions taken by a committee on the behalf of the Board acting on behalf of the Association, (4) all waivers of the notice requirements for Owner meetings, Board member meetings or committee meetings, and (5) a record of each Owner's name, address and number of votes each Owner is entitled to vote.

Within ninety (90) days after assuming control from the Declarant and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Owners: (1) the date on which the Association's fiscal year commences, (2) the operating budget for the current fiscal year, (3) a list, by Homestead, of the Association's current assessments, including Base, Service Area, and Special Assessments, (4) the Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure, (5) the results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure, (6) a list of all

Association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies (this list shall also include the company names, policy limits, policy deductibles, additional named insured and expiration dates of the policies), (7) the Association's Charter, Articles, By-Laws and Rules and Regulations, (8) the Minutes of any Board meeting or meeting of the members for the fiscal year immediately preceding the current annual disclosure and (9) these responsible governance Policies, adopted pursuant to C.R.S. §38-33.3-209.5.

Further, the Association shall keep a copy of each of the following records (1) Resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations and obligations of Owners or any class or category of Owners, (2) the Minutes of all Owners' meetings, and records of all actions taken by Owners without a meeting, for the past three (3) years, (3) all written communications within the past three (3) years to Owners generally as Owners, (4) a list of the names and business or home addresses of the Association's current directors and officers, (5) the Association's most recent annual report, if any, and (6) all financial audits or reviews conducted during the immediately preceding three (3) years.

In order to provide the greatest latitude of disclosure to the Owners, the Association may maintain a website containing some or all of the documents/records listed above. The website may consist of a public area, available to the public, and a private area, limited to Owners and requiring a password to enter. The Board shall use its discretion as to which documents/records are posted on the website and therefore, some of the above listed documents/records may not be available on the website.

The Association (or its managing agent) shall also have available for inspection and copying, at the Association's office, a binder containing all of the above listed documents. The Board encourages Owners to access the documents via the website, but will allow copying and inspection at the office of the Association. In accordance with Section 10.4(c) of the By-laws:

- (a) The inspection and/or copying of the records shall be at the Owner's expense.
- (b) The inspection and/or copying shall be by appointment only during the Association's office hours. The binder containing the Association's documents and records shall at all times remain at the Association's office and shall not be removed by any Owners, for any reason.
- (c) Owners shall complete, sign and submit a written request for inspection and/or copying ("Association Request Form") at least five (5) business days prior to inspection/copying. A copy of the Association Request Form may be downloaded from the Association's website or will be provided to the requesting Owner by the Association upon verbal or written request. Certain privileged documents of the Association may not be available for inspection/copying including, documents and records protected by the attorney-client privilege, and those records that are confidential or protected by federal or state privacy laws.

- (d) Association documents/records, including membership lists, shall not be used by Owners for (1) any purpose unrelated to an Owner's interest as an Owner, (2) any commercial purpose, (3) the purpose of distributing or selling such records to any person, (4) used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association (4) any other improper purpose, determined in the sole discretion of the Board.
- (e) The cost of copying any record is 25¢ per page. The cost of copying must be paid in full prior to the Association releasing the copies to an Owner. There shall be no cost for downloading and printing any document provided on the Association's website.

E. Policy Regarding Investment of Reserves of the Association:

Section 3.16(f) of the By-Laws provides that the Board's duties include the depositing of all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association, however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks. Any fund or account created or established by the Board pursuant to the above-referenced authority are hereafter referred to as the "Association Accounts."

In order to preserve and protect the principal of the Association Accounts:

1. All Association Accounts (except for selected reserve funds as provided in Section 3.16(f) of the By-Laws) shall be deposited in a FDIC insured interest bearing (when possible) savings or checking account.
2. Association Accounts shall only be used for the purposes for which the Association Account in question was established,
3. Withdrawal of funds from the Association Accounts shall require the prior authorization and approval of the Board.
4. With regard to investments of the Association Accounts, the officers and members of the Board shall be subject to the following standards of conduct.

(A) Each member of the Association's Board ("Director") shall discharge the Director's duties as a director, including the Director's duties as a member of a committee of the Board, and each officer, including any person whom the Board delegates responsibilities as to the Association Accounts, including, without limitation, a managing agent, attorney or accountant employed by the Board ("Officer"):

- (i) in good faith;
- (ii) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(iii) in a manner the Director or Officer reasonably believes to be in the best interests of the Association.

(B) In discharging duties, a Director or Officer is entitled to rely on information, opinions reports, or statements, including financial statements and other financial data, if prepared or presented by:

(i) one or more Officers or employees of the Association who the Director or Officer reasonably believes to be reliable and competent in the matters presented;

(ii) legal counsel, a public accountant, or another person as to matters the Director or Officer reasonably believes are within such person's professional or expert competence;

(iii) in the case of a Director, a committee of the Board of which the Director is not a member, if the Director reasonably believes the committee merits confidence.

(C) A Director or Officer is not acting in good faith if the Director or Officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Section (B) of this Section unwarranted.

(D) A Director or Officer is not liable as such to the Association or its members for any action taken or omitted to be taken as a Director or Officer, as the case may be, if, in connection with such action or omission, the Director or Officer performed the duties of the position in compliance with this Section.

(E) A Director, regardless of title, shall not be deemed to be a trustee with respect to the Association or with respect to any property held or administered by the Association including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

F. Policy Regarding Procedures for Conducting Owner and Board of Directors Meetings

The purpose of this Policy is to establish a uniform and systematic protocol for conducting meetings of the Association, including Owners and Board meetings; to ensure notice of meetings is given pursuant to Colorado law; to ensure equitable participation by Owners while permitting the Board to conduct the business of the Association; and to memorialize the circumstances under which the Board may meet in executive or closed door sessions.

1. Meetings. Meetings of the Owners, as the members of the Association, shall be held at least once a year on a date and at a time to be set by the Board. Special meetings of the Owners may be called by the President, by the Board, or by written request of Owners having at least twenty percent (20%) of the votes in the Association.
2. Notice. Notice of Owner meetings shall be hand delivered or sent prepaid by US Mail at least ten (10) days prior to but not more than fifty (50) days in advance of any

meeting of the Owners or as required by C.R.S. §38-33.3-308, as amended. Notice of any meeting shall also be given in the following manner:

- a) Notice shall be posted on the Association's website within twenty-four (24) hours of the mailing of notice to Owners.
- b) Notice shall be physically posted in a conspicuous place within the Marabou community, to the extent such posting is feasible and practical.
- c) Notice shall be provided via email to any Owner who has requested that the Association provide notice via email and has provided the Association with a valid email address. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four (24) hours before the meeting.

All notices shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendments to the Charter or By-Laws, any budget changes, and any proposal to remove an Officer or member of the Board.

3. Voting. All votes taken at Owner meeting shall be taken as follows:

- a) Votes for contested positions on the Board shall be taken by secret ballot. Also, at the discretion of the Board or upon the request of twenty percent (20%) of Owners present at a meeting or represented by proxy, if a quorum has been achieved, a vote on any matter affecting the common interest community on which all Owners are entitled to vote shall be by secret ballot. The secret ballot shall contain no identifying information concerning the ballot holder. In the event an Owner holds a proxy for another Owner, upon presentation of such proxy to the secretary of the Association, the Owner shall receive a secret ballot to cast the vote of the Owner who has provided the proxy. The proxy shall be kept and retained by the Association.
- b) All votes, other than those taken by secret ballot, shall be taken in such method as determined by the Board and pursuant to the By-Laws, including by hand, voice or by ballot, unless otherwise required by law.
- c) Written ballots, including secret ballots, shall be counted either by (1) a neutral third party or (2) a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be Board members, and, in the case of a contested election for a Board position, shall not be candidates. The results of any vote by secret ballot shall be reported without reference to names, addresses or other identifying information.

4. Proxies. Votes allocated to an Owner's Homestead may be cast pursuant to a proxy duly executed by that Owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the Charter, By-Laws, Articles or

Rules and Regulations of the Association, appointment of proxies may be made substantially as provided in C.R.S. §7-127-203. All proxies shall be reviewed by the Association's secretary as to the validity of the signature, signatory's authority to sign for the Owner, authority of the Owner to vote, conflicting proxies and expiration of the proxy.

5. Open Meetings. All regular and special meetings of the Association and Board, or any committee thereof, shall be open to attendance to all Owners of the Association or to any person designated by an Owner in writing as the Owner's representative. All Owners or designated representatives shall be permitted to attend, listen and speak at an appropriate time during the deliberations and proceedings. Owners who desire to speak are requested to notify the Association office in advance of the meeting, or on the meeting sign-in sheet, so the Board can plan the agenda accordingly. Owners will be recognized to speak at the appropriate point on the agenda; either during discussion of an agenda item or, for items not on the agenda, during open forum. Owners who have not signed up to address an item will be allowed to speak at the end of the meeting, time permitting. The President or acting chair shall, to the best of his/her ability, allocate time to each Owner for comment so as to allow as many Owners as possible to speak.
6. Meeting Sign-in. In order to manage the meeting effectively, Owners are asked to list any item(s) they wish to address when they sign-in at the meeting. The Owners' sign-in sheet will be available at the meeting and include: name, address, and any items they wish to address.
7. Open Forum. The agenda for all meetings shall follow the order of business determined by the Board, which shall include an Owner open forum during which any Owner who wishes to speak will have the opportunity to do so, subject to the provisions of this Policy. The Board shall have the right to determine the length of time of the open forum. The open forum should be used by Owners to speak about items that are not on the agenda.
8. Agenda Items. During the discussion of an agenda item, the President or acting chair will recognize Owners who have signed-up to address that item. The Board may place reasonable time restrictions on those persons speaking during the discussion and shall provide for a reasonable number of persons to speak on each side of an issue.
9. Owner's Right to Speak Before Board Action. The Board shall permit Owners to speak before the Board takes formal action on any item under discussion, in addition to any other opportunities to speak. The Board may place reasonable time restrictions on those persons speaking during the meeting and shall provide for a reasonable number of persons to speak on each side of an issue. If more than one person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue.

10. Additional Owner Input. At the end of the meeting, at the Board's discretion, Owners who did not sign up to speak may be given the opportunity to address items that were discussed at the meeting.
11. Time Limit to Speak; Protocol. The President or acting chair of the meeting may place reasonable limitation upon the time given to each Owner seeking to comment, to allow sufficient time for as many Owners as possible to comment within the time permitted. Unless otherwise determined by the President or acting chair, the time limit will be three (3) minutes per Owner. Owners should refrain from repeating other Owner's comments. Owners will only be allowed to speak one (1) time per agenda item.
12. Extended Discussion. If it becomes evident that discussion of a particular issue will exceed the time allocated on the agenda, the Board may schedule a special session to further address the issue. Time will not be taken during the meeting to repeat information previously discussed. If an Owner requires history or other background information on a complex topic that has been previously discussed, an Association representative will contact the Owner after the meeting. Owners requesting additional information on a topic shall leave a name, phone number and/or email address with a Board member.
13. Conduct of Participants. No Owner is entitled to speak until recognized by the President or acting chair. Owners will be asked to identify themselves by their name, address and lot number. There shall be no interruptions of anyone who has been recognized by the chair, except by the chair. All Owners and/or Owner's delegates should avoid side conversations. Specific time limits set for speakers shall be strictly observed. Personal attacks, whether physical or verbal, and offensive language will not be tolerated. All comments are to be directed to the chair and not to other individual participants. All comments are to be restricted to the agenda items being discussed. Meeting participants must behave courteously and be respectful to others.
14. Curtailment of Member Conduct. Should the President or acting chair determine that any Owner has spoken for the allocated amount of time or longer, or determine that the Owner is in violation of the provisions of this Policy, the President or acting chair shall have the authority to instruct that Owner to yield the floor, and that Owner will be obligated to comply with the President's or acting chair's instruction.
15. Disruptive or Unruly Behavior. If an Owner refuses to stop talking after his/her allotted time has ended, or otherwise disrupts the meeting, or is otherwise in violation of the provisions of this Policy, the following procedure will be followed:
 - (a) The President or acting chair will issue an oral warning that if the Owner continues to speak, disrupt the meeting, or otherwise act in violation of the provisions of this Policy than that person will be asked to leave the meeting.

(b) If the Owner continues to speak, disrupt the meeting, or otherwise act in violation of the provisions of this Policy, than the President or acting chair will call a recess and have the Owner escorted out of the meeting. The meeting will than resume as normal.

16. Executive or Closed Door Sessions. Notwithstanding the foregoing, the Board or a committee thereof may hold an executive or closed door session and may restrict attendance to Board members and other persons specified by the Board; provided that any such executive or closed door session may only be held in accordance with the provisions and requirements of C.R.S. §38-33.3-308(4), as amended, or other applicable laws. The matters to be discussed at such an executive session are limited to:

(a) Matters pertaining to employees of the Association or the managing agent's contract or involving the employment, promotion, discipline or dismissal of an officer, agent, or employee of the Association;

(b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) Investigative proceedings concerning possible or actual criminal misconduct;

(d) Matters subject to specific constitutional, statutory or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(e) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

(f) Review of or discussion relating to any written or oral communication from legal counsel.

Prior to the time the members of the Board convene in executive session, the President or acting chair shall announce the general matter of discussion as enumerated in paragraphs (a) to (f) above. No rule or regulation of the Board shall be adopted during the executive session. A rule or regulation may be adopted only during a regular or special meeting or after the Board goes back into regular session following an executive session.

G. Policy and Procedures for the Enforcement of Covenants and Rules and Regulations.

Under Article 3, Section (b)(ii)(C) of the Articles, Article 9 of the By-Laws, and Sections 8.2 and 14.3 of the Charter, the Association, through its Board, shall have the power and the duty to adopt rules and regulations, hear and make decisions regarding violations and written complaints filed with the Board and impose fines or other sanctions for the enforcement of the Governing Documents.

The Board may determine enforcement action on a case by case basis and take other actions as it may deem necessary and appropriate to ensure compliance with the Governing Documents. These enforcement provisions may be in addition to other specific provisions outlined in the Governing Documents, and the Association is not required to follow these enforcement provisions before seeking such other remedies. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate.

The procedures set forth in Article 9 of the By-Laws shall be followed when the Association enforces the Governing Documents as a result of complaints regarding Owners or occupants made to the Board by an Owner, occupant or management company.

Enforcement, Attorney's Fees and Fines/Sanctions. The provisions of this Policy shall not limit, or be a condition precedent to, the Association's right to enforce the Association's Governing Documents by any means available, including but not limited to, commencement of a lawsuit to force compliance or seeking injunctive relief or damages. The Association shall be entitled to reimbursement of all reasonable attorneys' fees and cost incurred by the Association in connection with any enforcement action, including any proceeding under this policy. However, if at the conclusion of any proceeding between the Association and an Owner, the Owner is the prevailing party, then the Owner shall be entitled to an award of attorney's fees and the Association cannot allocate any portion of its attorney's fees and costs to that Owner. If a violation involves damages to Association property, the violator shall pay the cost of repair or replacement. The procedures set forth in this policy shall not be necessary in order to impose any sanction or penalty for nonpayment of a delinquent assessment.

The Board hereby adopts the following fine schedule for all violations or infractions of any rule or regulation, or any provision of the Charter, or any other applicable Governing Document:

First Violation	Warning Letter
Second Violation (of same rule or provision of the Charter)	\$50.00
Third and subsequent violations (of same rule or provision of the Charter)	\$150.00

Where the violation or infraction is a continuing one, the continuation thereof for each day shall be deemed a separate and distinct violation and infraction resulting in a separate fine of \$50.00, commencing on the date of commencement of such violation and increasing to \$150.00 per day if such violation or infraction does not cease within fourteen (14) days following commencement. The Association shall promptly notify the Owner of a Homestead in writing of the assessment of any fine, and such assessment shall be promptly paid by such Owner. The Association shall have a lien upon the Homestead of the Owner who, or whose tenants, guests or invitees, violated any such Rule or Regulation or provision of the Charter, By-Laws, Articles, or

any other applicable Governing Document, to secure payment of fines assessed to such Homestead, and the Association may foreclose such lien, all in the manner as described in the Governing Documents and/or the Association's Collection Policy.

Business Judgment Rule. The decision of the Board to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise its business judgment, and not to be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further actions; (ii) the covenant, rule, regulation or restriction being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interest, based on hardship, expense or other reasonable criteria, to pursue the enforcement action.

No Waiver. Failure by the Board to enforce any covenant, restriction, rule or regulation, or any other provision of any of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter or preclude the Association from enforcing any other covenant, restriction, rule or regulation or provision of the Governing Documents.

Owner's Right to Enforcement. Action taken by the Association in accordance with this Policy, or a decision to not take action, shall not affect an Owner's right, if any, to bring his own enforcement action under the Association's Governing Documents and/or any applicable law.


H. Policy and Procedures for Addressing Disputes Arising Between the Association and Owners.


The Association, for the purpose of (i) encouraging the Association and Owners to work together in an attempt to resolve disputes without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationship between the parties and the members of the common interest community and (ii) complying with C.R.S. §38-33.3-209.5(1)(b)(VIII) and §38-33.3-124, hereby ratifies and adopts the alternative dispute resolution process ("ADR Policy") as set forth in Sections 20.1 and 20.2 of the Charter.

The foregoing Resolution to Enact Responsible Governance Policies was adopted by the Board of Directors of the Marabou Owners Association, Inc., on the 27 day of October, 2008.

[Remainder of page left blank intentionally. Signature page(s) to follow.]

MARABOU OWNERS ASSOCIATION, INC.,
a Colorado nonprofit corporation

By:  _____
Name: Jeffrey Jepson
Title: President

By:  _____
Name: Robert Durham
Title: Director

By:  _____
Name: Jeff Temple
Title: Vice President

STATE OF COLORADO

COUNTY OF ROUTT

Indexing Note: Please index in grantee's index under "Marabou" and "Marabou Owners Association, Inc." and in grantor's index under "Elk River Partners LLC"

**Supplement to the
Community Charter for Marabou**
(Specific Expansion Property)

THIS SUPPLEMENT is made by Elk River Partners LLC, a Georgia limited liability company, its successors and assigns (the "Declarant").

Declarant is the developer of the planned community located in Routt County, Colorado, known as Marabou. Declarant executed and filed that Community Charter for Marabou, which was recorded on June 2, 2006, at Reception Number 638976, in the Office of the Clerk and Recorder of Routt County, Colorado (such Community Charter, as it may be amended or supplemented from time to time, is referred to in this Supplement as the "Charter").

The property subject to the Charter constitutes a "planned community," as defined in the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.* (the "Act"). This Supplement, together with the plat referenced on Exhibit "A," constitutes an amendment pursuant to C.R.S. §38-33.3-210(1) to exercise the development right to add real estate to the planned community.

Pursuant to Section 18.1 of the Charter, the Declarant reserved the right to expand the Marabou community by recording one or more Supplements submitting to the terms of the Charter all or any portion of the additional property described on Exhibit "B" to the Charter. Any such Supplement requires the consent of the owner of the property being submitted, if other than the Declarant.

The property described on Exhibit "A" to this Supplement (the "Additional Property") is identified on Exhibit "B" to the Charter. Declarant, as the owner of the Additional Property, desires to submit the Additional Property to the terms of the Charter.

NOW, THEREFORE, Declarant hereby submits the real property described on Exhibit "A" to this Supplement to the provisions of the Charter and this Supplement, which shall hereafter encumber the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplement shall also be binding upon and benefit Marabou Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns (the "Association") in accordance with the terms of the Charter.

CHAPTER 1

Definitions

The definitions set forth in Chapter 1 of the Charter are incorporated by reference in this Supplement.

CHAPTER 2

Identification of Homestead and Reallocation of Allocated Interests

2.1 Identification of Homestead; Maximum Number. The one Homestead permitted to be created on the Additional Property is identified by unique number on Exhibit "A" and on the recorded plat referenced in Exhibit "A."

2.2 Reallocation of Allocated Interests. The voting rights in the Association are reallocated among all Homesteads within the Community, as expanded, so that the vote assigned to each Homestead is equal to that of each other Homestead. Liability for Common Expenses is reallocated among all of the Homesteads within the Community, as expanded, and as provided in Chapter 12 of the Charter.

CHAPTER 3

Amendment

3.1. By Declarant or Association.

The Declarant and the Association shall have the right and authority to amend this Supplement in the same manner and to the same extent as they are authorized to amend the Charter pursuant to Chapter 22 thereof.

3.2. By Owners.

Except as otherwise specifically provided above, this Supplement may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of at least 67% of the Homesteads within the Additional Property and the written consent of the Association, acting through its board of directors. In addition, during the Development and Sale Period, as defined in the Charter, the consent of the Declarant shall be required.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

3.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or without the written consent of the Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Supplement, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. No action to challenge the validity of an amendment may be brought more than two years

after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Supplement.

In witness of the foregoing, the Declarant has executed this Charter this 12 day of August, 2008

DECLARANT:

ELK RIVER PARTNERS LLC, a Georgia
limited liability company

By:

Name: Bruce Jeffrey Temple

Its: President

STATE OF Colorado)

COUNTY OF Routt)

The foregoing instrument was acknowledged before me this 12 day of August, 2008 by Bruce Jeffrey Temple, as the President of Elk River Partners LLC, a Georgia limited liability company.

Witness my hand and official seal.

Emily M. Dickerman
Notary Public

My Commission expires: 08/19/2010

EMILY M. DICKERMAN
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 08/19/2010

570201/CAdoc/Supp/072308/fab

JOINDER OF SECURITY HOLDER

The undersigned, being the beneficiary of that certain Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement from Elk River Partners, LLC, a Georgia limited liability company, to Public Trustee of Routt County, Colorado, and Guardian Bank, a bank organized under the laws of the State of Georgia, dated May 5, 2008, recorded on May 6, 2008, at Reception Number 673902, in the Office of the Clerk and Recorder of Routt County, Colorado ("Deed of Trust"), securing payment of a loan and encumbering the property subject to the this Supplement, does hereby join in the execution of this Supplement to evidence its consent to this Supplement and to the Charter and to subordinate its interest under the Deed of Trust to this Supplement and the Charter.

IN WITNESS WHEREOF, the undersigned hereby joins in execution of this Supplement by and through its authorized representatives this 12th day of August, 2008.

GUARDIAN BANK, a bank organized under the
laws of the State of Georgia

By: P. Ray Chitty (SEAL)
Name: P. Ray Chitty
Its: President

[BANK SEAL]



STATE OF Georgia
COUNTY OF Larimer

The foregoing instrument was acknowledged before me this 13th day of Aug, 2008 by P. Ray Chitty, as the President of Guardian Bank, a bank organized under the laws of the State of Georgia.

Witness my hand and official seal.

Denise H. Chavis
Notary Public

My Commission expires: 9-20-08

EXHIBIT "A"
Additional Property

All that certain real property and improvements thereon as follows:

A parcel of land located in the NE1/4NE1/4 of Section 28 and the NW1/4NW1/4 of Section 27, Township 7 North, Range 85 West of the 6th P.M.
BEGINNING at the monumented North 1/16 of Sections 27 and 28, a found No. 5 rebar with a aluminum cap attached and stamped for said corner;
thence N 88°04'20" W, 884.66 feet along the south line of the NE1/4NE1/4 of Section 28 to the SE corner of a tract of land as conveyed by Deed appearing in Book 734 at Page 56;
thence N 88°04'20" W, 398.49 feet along said south line of aforesaid tract of land and the south line of the NE1/4NE1/4 of Section 28 to the SW corner of the NE1/4NE1/4 of said Section 28, said point being at the centerline of the Elk River;
thence N 48°02'25" E, 543.68 feet along the centerline of the Elk River and aforesaid tract of land to the northerly most corner of aforesaid tract of land and being also the SW corner of a tract of land as conveyed by Deed appearing in Book 678 at Page 2248, Exception (2);
thence along said the centerline of the Elk River and the south line of the aforesaid tract of land the following 5 courses:

- 1) N 41°59'33" E, 65.74 feet
- 2) N 49°23'09" E, 212.75 feet
- 3) N 50°07'44" E, 263.95 feet;
- 4) N 58°36'54" E, 157.93 feet
- 5) N 70°15'08" E, 85.70 feet to the south line of Parcel B as conveyed by Deed appearing in Book 678 at Page 2252 and being on the centerline of the Elk River for the following 4 courses:

- 1) N 72°28'35" E, 194.62 feet
- 2) N 86°19'46" E, 147.96 feet
- 3) N 69°46'41" E, 284.76 feet
- 4) N 48°55'24" E, 238.50 feet to the NW corner of Parcel 8A of the Parcel 8, Campbell Ranch Exemption as filed by Plat at File No. 11764;
thence S 19°19'03" E, 1311.61 feet along the west line of said Parcel 8A to the SW corner of said Parcel No. 8A and the south line of the NW1/4NW1/4 of Section 27;
thence N 87°36'22" W, 960.37 feet along the south line of the NW1/4NW1/4 of Section 27 to the POINT OF BEGINNING.

Bearings are based upon the monumented south line of NE1/4NE1/4 of Section 28 between the found monuments recorded with the Colorado land monument recorded in the office of the County Clerk and Recorder. Bearing being N 88°04'20" W.

TOGETHER WITH a perpetual non-exclusive easement for underground utilities and driveway access for ingress and egress, over and across that portion of land as described in "Exhibit B" as attached to Agreement for Easement recorded July 28, 1997 in Book 735 at Page 652.

ALSO TOGETHER WITH a perpetual non-exclusive easement for underground utilities and driveway access for ingress and egress, over and across that portion of land as described in "Exhibit B" as attached to

Agreement for Easement recorded July 28, 1997 in Book 735 at Page 653, as amended by First Amendment
recorded July 28, 1997 In Book 735 at Page 654.

County of Routt, State of Colorado

RESOLUTION OF THE
MARABOU OWNERS ASSOCIATION, INC

RE: MEMBERSHIP INCOME APPLIED TO THE FOLLOWING YEAR'S ASSESSMENT
REVENUE RULING 70-604

WHEREAS, the Marabou Owners Association is a Colorado corporation duly organized and existing under the laws of the State of Colorado, and

WHEREAS, the members desire that the corporation shall act in full accordance with the rulings and regulations of the Internal Revenue Service:

NOW, THEREFORE, the members hereby adopt the following resolution by and on behalf of the Marabou Owners Association, Inc.:

RESOLVED, that any excess of membership income over membership expenses for the year ended December 31, 2008 shall be applied against the subsequent tax year member assessments as provided by IRS Revenue Ruling 70-604.

This resolution is adopted and made a part of the minutes of the meeting of

10/8/2009

BY:


President

ATTESTED:


Secretary



Marabou Homeowners Association (MOA)

SUBJECT: HOA Dues Collection Procedure

DATE ISSUED: September 30, 2008

PURPOSE:

This purpose of this policy is to memorialize MOA billing cycles and subsequent delinquency procedures as they pertain to late payment of MOA quarterly assessments. These policies are intended to be fair to all homeowners by establishing a timeline of action by the MOA for overdue accounts.

SCOPE:

This procedure applies to all properties in the Marabou subdivision.

PROCEDURE:

Schedule of Actions

Quarterly association dues invoices are sent to the homeowners on:

- January 1st, April 1st, July 1st and October 1st of each year (all invoices are due upon receipt).

Correspondence for delinquency enforcement actions:

- **30 days** overdue; a reminder notice is sent to delinquent owners.
- **60 days** overdue; a second reminder notice is sent outlining MOA policy regarding suspension of privileges to those homeowners that who have not sent payment.
- **90 days** overdue; Ranch Privileges are suspended
- **120 days** Default Notice is sent to homeowners who have not paid. The MOA Board may, at its discretion, proceed with a request for lien for non-payment of MOA dues. If approved by the MOA Board of Directors a title search is performed, a property lien is prepared, and all necessary paperwork is filed with the courts. Legal expenses are added to the Owner's account; a copy of the lien paperwork is sent to the homeowner.
- All further collection efforts are handled by the Association's attorney, including collection litigation and possible foreclosure.

Process:

This process is designed to collect the quarterly MOA assessments in a timely and equitable manner. Prompt payment of all accounts is necessary for the MOA to fund both operations and reserve funds. At numerous steps during the process the homeowner is afforded the opportunity to bring their account into balance. Throughout the process, there is also an opportunity for exceptions to be made by the MOA Board of Directors due to unusual, unfortunate or extreme circumstances.

Marabou™

STEAMBOAT SPRINGS

Marabou Steamboat Springs Transfer Fee

WHEREAS, on Friday, October 31, 2008 at a specially scheduled meeting of the Marabou Homeowners Association Board of Directors, held at 2:00pm; and

WHEREAS, Article 3, Section A of the Articles of Incorporation of the Marabou Owners Association empowers the Board of Directors to amend the Charter or Bylaws as necessary and appropriate pursuant to the Colorado Common Interest Ownership Act; and

WHEREAS, Article 3, Section C of the Articles of Incorporation of the Marabou Owners Association empowers the Board of Directors to enforce by legal means the provisions of the Charter, Bylaws or Ranch Rules including, without limitation, the collection of any assessments; and

WHEREAS, NOW THEREFORE BE IT RESOLVED THAT the Board, by unanimous consent, hereby establishes the following Conservation Transfer Fee for the resale of Homesteads in the Marabou Subdivision:

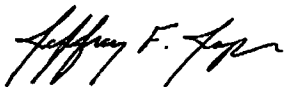
- a. A Conservation Transfer fee in the amount of one-half of one percent (.5%) of the aggregate sales price of the homestead including all rebates, commissions, trade-in-kind or other benefit to the seller,
- b. This transfer fees shall be fully disclosed to both parties in the transaction.
- c. This fee is payable to the Marabou Homeowners Association immediately at the closing of the transaction,
- d. This fee will be allocated to the general fund of the annual budget of Marabou Homeowners Association,
- d. The allocation of this fee will be at the sole discretion of the Marabou Homeowners Association Board of Directors with consideration given to Conservation initiatives on the Ranch.

BE IT FURTHER RESOLVED THAT any subsequent default, cessation or refusal to make timely payment shall constitute default on the part of the homestead owner and shall result in initiation of legal collection procedures; and

BE IT FURTHER RESOLVED THAT the board shall retain the right to amend or repeal this resolution.

Executed this 31st day of October, 2003.

Jeffery Jepson, President



Jeffery Temple, Vice President



Robert Durham, Director



STATE OF COLORADO

COUNTY OF ROUTT

Indexing Note: Please index in grantee's index under "**Marabou**" and "**Marabou Owners Association, Inc.**" and in grantor's index under "**Elk River Partners LLC**"

Supplement to the Community Charter for Marabou
(Specific Expansion Property)

THIS SUPPLEMENT is made by **Elk River Partners LLC**, a Georgia limited liability company ("**Declarant**").

Background and Purpose

Declarant is the developer of the planned community located in Routt County, Colorado, known and referred to here as "**Marabou**." Declarant executed and filed the Community Charter for Marabou, which was recorded on June 2, 2006, at Reception Number 638976 in the Office of the Clerk and Recorder of Routt County, Colorado. (Such Community Charter, as amended or supplemented from time to time, is referred to in this Supplement as the "**Charter**.")

The property subject to the Charter constitutes a "planned community," as defined in the Colorado Common Interest Ownership Act, Colo. Rev. Stat. §38-33.3-101, *et seq.* (the "**Act**"). The Marabou Owners Association, Inc., a Colorado nonprofit corporation (the "**Association**"), administers the operations of Marabou pursuant to the Charter and the Act.

This Supplement constitutes an amendment to the Charter documenting the exercise of Declarant's development right to add real estate to the planned community, pursuant to Section 38-33.3-210(1) of the Act.

In accordance with Section 18.1 of the Charter, Declarant reserved the right to expand the Marabou community by recording one or more Supplements submitting to the terms of the Charter all or any portion of the additional property described on Exhibit "B" to the Charter. Any such Supplement requires the consent of the owner of the property being submitted, if other than the Declarant.

The property described on Exhibit "A" to this Supplement (the "**Additional Property**") is a portion of the property identified on Exhibit "B" to the Charter. Declarant is the owner of the Additional Property.

Pursuant to Section 19.1(a) of the Charter, Declarant reserved the right to create "Common Areas," defined in Section 3.1 of the Charter to include (among other interests) property and facilities in which the Association holds possessory or use rights for the common use or benefit of more than one Homestead (as defined in the Charter).

Declarant, as the owner of the Additional Property and the developer of Marabou, intends to (i) submit the Additional Property to the Charter, (ii) grant an easement over the Additional Property to the Association as set forth below, and (iii) establish that easement as Common Area under the Charter.

The Association intends to acknowledge its acceptance of the easement described above and its obligations with respect to that easement as Common Area under the Charter.

Supplement

CHAPTER 1 **Definitions**

The definitions set forth in Chapter 1 of the Charter are incorporated by reference in this Supplement.

CHAPTER 2

Submission of Additional Property to the Charter

Declarant submits the Additional Property to the provisions of the Charter and this Supplement, which, from and after the recording of this Supplement in the office of the Clerk and Recorder of Routt County, Colorado, shall encumber the title to the Additional Property and shall be binding upon all persons having any right, title, or any interest in the Additional Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

CHAPTER 3

Easement

Declarant, as owner of the Additional Property, grants to the Association an easement over and across the Additional Property (the “**Easement**”), according to the following terms and conditions:

(a) The Easement shall constitute Common Area for all purposes under the Charter, and shall be used by the Association only for the purpose of wildlife viewing and other recreational activities.

(c) Declarant may, but shall not be obligated to, improve the Additional Property with viewing stands or other Improvements. The Association shall also have the right to construct or install Improvements on the Additional Property, subject to (i) the architecture, landscaping and aesthetic standards set forth in Chapter 5 of the Charter and (ii) the provisions of this Section 2.1 below.

(c) The rights and privileges granted to the Association under the Easement are not exclusive, and Declarant expressly reserves the right to grant to third parties the right to use and occupy the Additional Property for any lawful purpose that is not inconsistent with the rights granted to the Association by this Supplement. The third parties may include, without limitation, (i) owners and occupants of the property described on Exhibit B to the Charter, and (ii) third parties to whom Declarant may grant easements as permitted under Chapter 13 and any other applicable provisions of the Charter.



Emerald Mountain Surveys, Inc.

Professional Land Surveying

PO BOX 774812 · 2851 Riverside Plaza #7D

Steamboat Springs, Colorado 80477

(970) 879-8998 · Fax (970) 871-8009

<http://www.emeraldmtn.net>

EXHIBIT "A"

LEGAL DESCRIPTION

100' X 100' PARCEL

Legal Description of a Parcel of land located in SE1/4 SE1/4, Section 27, and SW1/4 SW1/4, Section 26, Township 7 North, Range 85 West, of the 6th, PM, Routt County, Colorado, and more particularly described as follows,

Beginning at the northeast corner of Homestead D9, MARABOU FILING 1, a subdivision which is recorded at reception number 638975 of the Routt County Clerk and Recorder's Records,

thence along the boundary line of said MARABOU Filing 1

S 90° 00' 00" E 414.05 feet;

thence continuing along the boundary line of said MARABOU

Filing 1 N 00° 00' 00" E 81.09 feet to the True Point of

Beginning;

thence continuing along the boundary line of said

MARABOU Filing 1 N 00° 00' 00" E 100.00 feet;

thence N 90° 00' 00" E 100.00 feet;

thence S 00° 00' 00" E 100.00 feet;

thence N 90° 00' 00" W 100.00 feet to

the True Point of Beginning.

Bearings are based north line of the east line of said **Homestead D9** as being N00°00'00"W, being marked on the each end by a #4 Rebar/yellow plastic cap "EMSI RLS 16394", Bearings were assumed.

SURVEYOR'S STATEMENT

I, James B. Ackerman, being a Professional Land Surveyor licensed by the State of Colorado, state that this Legal Description was prepared by me, or under my direct supervision, and that it is accurate to the best of my knowledge.

DATED: 8/11/2010

James B. Ackerman

Colorado R.L.S. #16394

I:\DWG 2005\2148-1\100x110parcel.doc



(d) Without limiting or impairing the other rights reserved for the benefit of Declarant under the Charter, Declarant confirms its right to adjust the boundaries of the Common Area, and accordingly, the Easement from time to time, as provided in Section 19.1(e) of the Charter.

CHAPTER 4

General Provisions

4.1. Amendment. This Supplement constitute a part of the Charter and may be amended only in accordance with the applicable terms of the Charter.

4.2. Binding Effect. The provisions of this Supplement shall also be binding upon and benefit the Association and its successors and assigns in accordance with the terms of the Charter.

In witness of the foregoing, Declarant has executed this Supplement this 12th day of August 2010.



DECLARANT:

ELK RIVER PARTNERS LLC,
a Georgia limited liability company

By: Jeff Temple

Name: Jeff Temple

Its: partner

STATE OF COLORADO)
)
COUNTY OF ROUTT)

The foregoing instrument was acknowledged before me this 12th day of August 2010 by Jeff Temple as Partner of Elk River Partners LLC, a Georgia limited liability company.

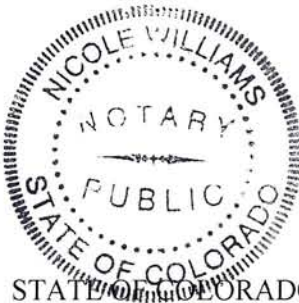
Witness my hand and official seal.

Nicole Williams
Notary Public

My Commission expires: MY COMMISSION EXPIRES 8/22/2011

ASSOCIATION'S CONSENT TO SUPPLEMENT

MARABOU OWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, understands and consents to its obligations under this Supplement, this 12th day of August 2010.



ASSOCIATION: **MARABOU OWNERS ASSOCIATION, INC.**,
a Colorado nonprofit corporation

By: Jeff Temple
Name: Jeff Temple
Title: Sec. Treasurer Board Member

STATE OF COLORADO)
)
COUNTY OF ROUTT)

The foregoing instrument was acknowledged before me this 12th day of August 2010 by Jeff Temple as Sec. Treasurer of Marabou Owners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

Nicole Williams
Notary Public

My Commission expires: MY COMMISSION EXPIRES 8/22/2011