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**AMENDED AND RESTATED
DECLARATION OF
PROTECTIVE COVENANTS
FOR FISH CREEK MEADOWS SUBDIVISION**

This AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS ("**Declaration**") is made as of this 8th day of November 2006, by FISH CREEK MEADOWS ASSOCIATION, a Colorado non-profit corporation ("**Association**").

ARTICLE I

GENERAL

1.1 Fish Creek Meadows Subdivision was originally filed pursuant to the final plat of Fish Creek Meadows Subdivision recorded in the office of the Clerk and Recorder County of Routt, State of Colorado on August 3, 1966 at File No. 6625, Reception No. 215936. All property within the subdivision was subjected to the "Protective Covenants" which were attached to the Plat and which were amended and restated in the Protective Covenants recorded August 2, 1991 in Book 665 at Page 337 at Reception No. 403109 ("**Existing Protective Covenants**").

1.2 The owners of the Lots in the subdivision have voted to amend and restate the Existing Protective Covenants as provided herein and have elected to be governed by the Colorado Common Interest Ownership Act ("CCIOA"). These Amended and Restated Declarations of Protective Covenants shall supercede and shall amend and restate the Existing Protective Covenants in their entirety.

1.3 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, any provision, covenant, condition or restriction contained in this Declaration may be amended, repealed or expanded at any time upon approval of the amendment by Members holding a majority of the voting power of the Association entitled to vote. The amendment shall be effective upon the recordation of a certificate (which may be contained in the Amendment) executed by the President or a Vice President of the Association setting forth the amendment in full and certifying that the amendment or repeal has been approved by the Members. Any amendment to the Declaration made hereunder shall be effective only when recorded by the Clerk of Routt County, State of Colorado.

ARTICLE 2

DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

2.1 "Act" shall mean the Colorado Common Interest Ownership Act as provided in

C.R.S. § 38-33.3-101, *et seq.*, as the same may be amended from time to time.

2.2 **“Articles of Incorporation”** shall mean the Articles of Incorporation of the Association which have been or will be filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.3 **“Assessment”** shall mean a Common Assessment, Assessment, Special Assessment, or a Reimbursement Assessment.

2.4 **“Association”** shall mean Fish Creek Meadows Association, a Colorado non-profit corporation, its successors and assigns.

2.5 **“Board of Directors”** or **“Board”** shall mean the Board of Directors of the Association.

2.6 **“Budget”** shall mean a written, itemized estimate of the revenues to be derived and the expenses to be incurred by the Association in performing its functions under this Declaration and prepared pursuant to Article 6 of this Declaration.

2.7 **“Bylaws”** shall mean the Bylaws of the Association which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

2.8 **“City”** shall mean the City of Steamboat Springs, Colorado.

2.9 **“Common Area”** shall mean any easements shown on the Plat and any other land or easements held by the Association for the use and benefit of the Owners.

2.10 **“Common Assessment”** shall mean the assessments levied against each Owner hereunder and made for the purpose of paying the annual costs of operating the Association.

2.11 **“Community Area”** shall mean the real property subject to the Existing Protective Covenants and the Plat and all other real property, which is made subject to the terms and provisions of this Declaration.

2.12 **“County”** shall mean Routt County, Colorado.

2.13 **“Declaration”** shall mean the Existing Protective Covenants as amended and restated by this instrument, as may be amended or supplemented from time to time.

2.14 **“DRB”** shall mean the Design Review Board provided for in Article 4 of this Declaration.

2.15 **“Improvement”** shall mean all structures and improvements located upon or made to a Lot and any appurtenances thereto of every type or kind, including, but not limited to, buildings,

outbuildings, utility lines, swimming pools, patio covers, additions, outdoor sculptures or artwork, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, decks, exterior fixtures, poles, signs, exterior tanks, FCC Regulated Devices and solar equipment.

2.16 **“Lot”** shall mean a physical portion of the Community, which is designated for separate ownership or occupancy and the boundaries of which are depicted upon the Plat. For the purposes of conforming the terms and provisions of this Declaration to the terms and provisions of the Act, the term **“Lot”** shall be analogous to the term **“unit”** as that term is defined in the Act.

2.17 **“Member”** shall mean the Person or, if more than one, all Persons collectively, who constitute the Owner of a Lot except as otherwise limited in Section 6.3.

2.18 **“Membership Interest”** shall mean each Member's membership interest in and to the Association.

2.19 **“Notice and Hearing”** shall mean a written notice and hearing before the Board of Directors or a tribunal appointed by the Board, as may be provided in the Rules and Regulations.

2.20 **“Owner”** shall mean the Person, or, if more than one, all Persons collectively, who hold fee simple title to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

2.21 **“Person”** shall mean a natural person, a corporation, a partnership, a limited liability company or any other entity permitted to hold title to real property pursuant to Colorado law.

2.22 **“Plat”** shall mean and include the Fish Creek Meadows Subdivision Plat Map recorded at File No. 6625, as may be amended.

2.23 **“Project”** shall mean any change, alteration or addition to any Lot or property located within the Community, as more particularly defined in Section 4.2.

2.24 **“Property”** shall mean the real property subject to the Plat.

2.25 **“Record”** or **“Recorded”** shall mean the filing for record of any document in the office of the Clerk and Recorder of the County.

2.26 **“Reimbursement Assessment”** shall mean a charge against a particular Owner and such Owner's Lot for the purpose of reimbursing the Association for expenditures and other costs and expenses incurred by the Association which arise from or are related to any violation of the Declaration or the Rules and Regulations by an Owner, together with late charges and interest thereon as more fully provided for herein.

2.27 **“FCC Regulated Device”** shall mean any dish, antennae or other equipment designed or used for receiving or sending television broadcast signals (**“TVBS”**), direct broadcast satellite service (**“DBS”**), or multi-channel multipoint distribution services (**“MDS”**) that are now or hereafter

regulated by the United States Federal Communications Commission including, without limitation, under 47 CFR § 1.400, and all masts, cabling, supports, wires, conduits and accessories thereof.

2.28 “**Related Users**” shall mean all of an Owner’s tenants, guests, invitees, contractors or any other Person whose use arises by, through or under the Owner.

2.29 “**Rules and Regulations**” shall mean rules and regulations adopted by the Board of Directors, and as may be amended from time to time.

2.30 “**Secondary Unit**” shall mean a living unit (such as a caretaker or rental unit) having a kitchen (cooking device, sink and refrigerator) and access door separate from the kitchen and access door of the single-family residence.

2.31 “**Special Assessment**” shall mean a charge against each Owner and such Owner’s Lot represent a portion of the costs of the Association for the purpose of funding major capital repairs, maintenance, replacements and improvements pursuant to the Section of this Declaration entitled “Special Assessments for Capital Expenditures.”

ARTICLE 3

GENERAL RESTRICTIONS APPLICABLE TO COMMUNITY

All real property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions and subject to the rights and reservations set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board of Directors if such strict application would be unreasonably or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written Rules and Regulations promulgated by the Board of Directors. The Board of Directors may from time to time adopt Rules and Regulations which supplement, modify, limit, create exceptions to or expand these limitations and restrictions or which create additional limitations and restrictions.

3.1 Property Uses. All Lots shall be used only for residential purposes. There shall be only one single-family residence per Lot. No Secondary Units are permitted. Notwithstanding the foregoing, business activities associated with the sale of Lots or residences constructed thereon shall be allowed. In addition, in-home businesses shall be allowed, provided such activities (i) are conducted within the dwelling and are not visible or apparent by sight, sound or smell from outside the Lot; (ii) comply with zoning requirements; (iii) do not require regular visitation to the Lot by employees, clients, customers, suppliers or other business invitees; and (iv) are consistent with the residential character of the Community and do not, in the reasonable discretion of the Board, constitute a nuisance, or a hazardous or offensive use.

3.2 No Subdivision of Lots. No Lot may subdivided; provided, that boundary lines of the Lots may be adjusted with the prior approval of the DRB.

3.3 Compliance with Laws. Nothing shall be done or kept on any Lot in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Community.

3.4 Maintenance of Lots. No Improvement on any Lot shall be permitted to fall into disrepair and all property within the Community shall be kept and maintained in a clean, attractive and sightly condition. The maintenance, repair and upkeep of the Improvements on each Lot shall be the responsibility of the Owner of the Lot.

3.5 No Noxious or Offensive Activity. No activity, use or practice shall be permitted on any Lot which is noxious or offensive, or which unreasonably interferes with the peaceful enjoyment or possession of any Lot or any portion of a Common Area.

3.6 No Temporary Structures. No tent, shack, teepee, temporary structure or temporary building shall be placed upon any property within the Community for use as a temporary or permanent residence.

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

3.8 Signs. No sign, post or billboard, advertising device or display of any kind shall be erected or maintained anywhere in the Community as to be evident to public view, except (a) such signs as may be approved in advance in writing by the DRB; or (b) single sign advertising a Lot for sale or lease may be placed on any Lot, provided, however, that standards relating to the dimensions, color, size and location of such sign may be established from time to time by the DRB.

3.9 Firearms. No firearms shall be used or discharged within the Community.

3.10 Utilities. All Lots shall connect with the municipal sewage disposal system and water distribution system in accord with municipal regulations. All public utilities including telephone and electrical installation and wires, and similar uses shall be underground. Only electricity, solar, geothermal, LP gas, or natural gas will be permitted as a means of heating water and all residential improvements with the exception of City-approved fossil fuel burning fireplaces.

3.11 Easements. Easements for installation and maintenance of utilities have been reserved and dedicated as shown on the plat. No private motorized vehicles are allowed on the easements. Within these easements, no structure, planting or other material shall be placed or permitted to remain which might damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

3.12 Setback Lines. No dwelling, garage, barn or building of any kind shall be placed on any Lot within 30 feet of any property line.

3.13 Surface Water and Drainage. In the interest of public health and sanitation and to decrease the hazards of pollution of subterranean and surface waters, all Owners agree not to use their Lots in any manner or for any purpose that would result in alteration to the drainage or dumping of any refuse, sewage or other material which might tend to pollute surface or subterranean waters.

ARTICLE 4

ARCHITECTURAL GUIDELINES AND APPROVAL

4.1 Intent. Proposed projects shall be reviewed and, when acceptable, approved by the Design Review Board (DRB). The DRB will be primarily concerned with the siting, view corridors, driveway access, drainage, exterior colors, and project materials in order to maximize the positive impacts of a project on neighbors and the subdivision as a whole.

4.2 Project Defined. "Projects" requiring approval of the DRB shall mean and include, without limitation: (a) Improvements as defined in Article 2.15 of these Covenants; (b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; and (c) any change or alteration of any previously approved Project, including any change of exterior appearance, color or texture.

4.3 Architectural Guidelines and Approval. The Association shall adopt Rules and Regulations, as may be amended from time to time, regarding architectural design and control and the method of processing applications for Projects. Owners and Related Users shall be responsible to obtain and abide by the then current version of the Rules and Regulations in connection with any proposed Project. No Project shall be commenced until the DRB has approved the Project.

ARTICLE 5

COMMON AREA

5.1 Right of Association to Regulate Use. The Association, acting through the Board, shall have the power to regulate through the adoption of Rules and Regulations the use of Common Areas, if any, by Members and the public to further enhance the overall rights of use and enjoyment of all Members.

ARTICLE 6

ASSOCIATION OPERATION

6.1 Association. The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have all duties,

powers and rights set forth in the Act, the Colorado Revised Nonprofit Corporation Act, this Declaration, and in its Articles of Incorporation and Bylaws.

6.2 Association Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Bylaws. The Board of Directors may, by resolution, appoint officers who are not Board members and delegate portions of its authority to those officers. Such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

6.3 Membership in Association. Each Owner of a Lot within the Community shall be a Member of the Association. A "Member" as defined in the Declaration, is a natural person, or if more than one, all persons collectively, who constitutes the Owner of a lot. There shall be one Membership in the Association for each Lot within the Community. There shall be one vote per lot. The Person or Persons who constitute the Owner of a Lot shall collectively be the holder of the Membership appurtenant to that Lot, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Lot.

6.4 Power to Adopt and Enforce Rules and Regulations. The Board may adopt, amend, repeal and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, the use of any other property within the Community, including Lots, or any other lawful matter; provided, that the Board shall give thirty (30) days prior notice of any amendments to the Members and such amendment shall not become effective if the Board receives written objection from twelve (12) or more Members, unless the proposed amendment is subsequently approved by a majority vote of the Members present (in person or by proxy) at a meeting called for that purpose. Each Member shall comply with such Rules and Regulations and shall be responsible to ensure that all Related Users comply with such Rules and Regulations. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail. The Board shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member. Without limiting the generality of the foregoing, the Board shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within the Community after Notice and Hearing (unless a bona fide emergency exists), without liability to the Member thereof or the Association, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member of this Declaration or the Rules and Regulations, unless the breach is a

continuing breach in which case such suspension shall continue for a period not to exceed sixty (60) days from the date such breach is cured; (e) by levying and collecting a Reimbursement Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member and (f) by levying and collecting uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member for breach of this Declaration or the Rules and Regulations.

6.5 Common Assessments. For each calendar year, the Association may levy Common Assessments against Owners of the Lots. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Lot.

6.6 Apportionment of Common Assessments. The share of the Common Assessments for any year, payable by the Owner of each Lot, equals the total amount to be raised by the Common Assessments for that year, as shown in the Association Budget for that year, divided by the total number of Lots in the Community. To the extent the Board determines that it is feasible, any common expense or a portion thereof benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited.

6.7 Annual Budgets. The Common Assessment shall be made on an annual basis against all Lots based upon the Association's advance budget of its cash requirements to provide for the administration and performance of its duties during such year. The budget shall be prepared by the Board and submitted to the Owners; provided that a two-thirds vote of a quorum of the Owners at the annual meeting is necessary to disapprove the budget. Common Assessments shall be due and payable annually. The omission of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

6.8 Special Assessments for Capital Expenditures. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to (a) construct or reconstruct, repair or replace capital Improvements upon Association Properties, including necessary personal property related thereto; (b) add to the Association Properties; (c) provide for necessary facilities and equipment to offer the services authorized in this Declaration; or (d) repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board of Directors shall not levy Special Assessments without the vote of the Members representing at least two-thirds (2/3) of the Owners of Lots subject to the Special Assessment who are entitled to vote. Special Assessments for capital Improvements which may be used by all Members of the Association shall be levied solely on the basis of, and in proportion to, the Membership Interest of an Owner. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified.

6.9 Reimbursement Assessments. The Board of Directors may, subject to the provisions hereof, levy a Reimbursement Assessment against any Owner if the willful or negligent failure of an Owner, or a Person acting by or through an Owner, to comply with this Declaration, the Articles of

Incorporation, the Bylaws or the Rules and Regulations results in the expenditure of funds by the Association including, but not limited to, court costs and attorneys' fees. Such Assessment shall be known as a Reimbursement Assessment. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Owner of the decision of the Board of Directors that the Reimbursement Assessment is owing. An Owner shall be entitled to Notice and Hearing prior to the issuance of a Reimbursement Assessment against such Owner by the Association.

6.10 Assignment of Assessments. The Board of Directors may assign its right to collect Assessments as collateral for any loan or credit facility made to the Association.

6.11 Late Charges and Interest. If any Assessment, or any installment thereof, is not paid when due, the Owner obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board. Any Assessment, or installment of Assessment, which is not paid when due shall also bear interest from the date such Assessment was due at a rate of one and one half percent (1 1/2%) per month or portion thereof, or such other rate as the Board may from time to time designate, not to exceed the maximum permitted by law.

6.12 Notice of Default and Acceleration of Assessments. If any Assessment, or any installment thereof, is not paid when due, the Board of Directors may mail a notice of default ("**Notice of Default**") to the Owner and to each first Mortgagee of the Lot who has requested a copy of the notice. If the delinquent Assessment or installment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment for the then current calendar year to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration.

6.13 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special or Reimbursement, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by the filing and foreclosure of a lien as hereinafter provided.

6.14 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

6.15 Lien to Enforce Assessments. Pursuant to and in accordance with the Act, the Association shall have a statutory lien on a Lot for any Assessment levied against that Lot, and/or fines imposed against its Owner, from the time such Assessment or fine becomes due. All fees, charges, late charges, attorneys' fees, fines and interest outstanding from such Owner shall be included in such lien. The lien created hereby and under the Act shall be prior and superior to any homestead rights or to any declaration of homestead rights recorded after the time that the Lot

becomes a part of the Community and shall have the priority attached to such lien under the Act and under Colorado law. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner for the foreclosure of mortgages in the State of Colorado or in any other manner provided under Colorado law.

6.16 Estoppel Certificates. Upon the written request of any Member and any Person with, or intending to acquire, any right, title or interest in the Lot of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

6.17 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

ARTICLE 7

MISCELLANEOUS

7.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2050, and thereafter shall be automatically extended for successive periods of ten (10) years each until terminated at any time by the vote, by written ballot, of Members holding at least sixty percent (60%) of the voting power of Members of the Association entitled to vote. In the event this Declaration is terminated, the termination of this Declaration shall be evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless recorded before such date. The Termination Agreement shall be recorded and the termination of this Declaration shall be effective upon such recording.

7.2 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally, or by mail, telephone, telecopier or electronic media. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

7.3 Persons Entitled To Enforce Declaration. The Board, acting by authority of the Association, and any Member of the Association entitled to vote shall have the right to enforce any or all of the provisions, covenants, conditions, and restrictions, contained in this Declaration against any property within the Community and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration.

7.4 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition or restriction contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

7.5 Enforcement of Self-Help. The Association, or any authorized agent, may enforce, by self-help, any of the provisions, covenants, conditions and restrictions contained in this Declaration. In order to affect a self-help remedy, the Association, without prior notice, may enter any portion of the Lot, provided that the Association shall not enter any dwelling except with having obtained proper legal process or in the case of any emergency affecting the safety of persons in the Community.

7.6 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

7.7 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

7.8 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the party that does not prevail shall pay to the prevailing party all costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorneys' fees.

7.9 Limitation on Liability. The Association, the Board of Directors, the DRB, any Member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

7.10 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

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

7.12 Colorado Common Interest Ownership Act. In the event that any of the terms and conditions of this Declaration are in conflict or inconsistent with the terms and conditions of the Act, the terms and conditions of the Act shall control. All terms and provisions contained herein, to the extent possible, shall be construed in accordance with the terms and provisions of the Act.

7.13 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity, unenforceability, partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

7.14 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter genders shall each include the masculine, feminine and neuter genders.

7.15 Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

7.16 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.

7.17 Disclaimer Regarding Safety. The Association shall not be obligated to, maintain or support certain activities within the Community designed to make it safer than it might otherwise be. **THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS, INJURY OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.** Each Owner assumes all risks of loss or damage to persons and property resulting from acts or failure to act of the third parties (and covenants to inform all Related Users of a Lot of the provisions of this section).

This Amended and Restated Declaration of Protective Covenants was adopted by a vote of the Owners to which sixty-seven percent (67%) of the votes in the Association are allocated at the Annual Meeting held on Nov. 8, 2006.

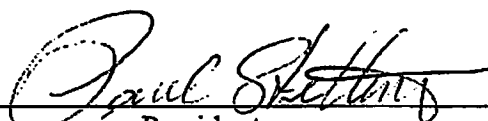
IN WITNESS WHEREOF, the Association has amended and restated this Declaration on the day and year first above written.

“Association”

FISH CREEK MEADOWS ASSOCIATION, a
Colorado non-profit corporation

ATTEST:


Secretary

By: 
President

