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*New 6/2011*

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
TRES VALLES WEST**

*HOA dues will be 398.<sup>00</sup> Jan. 1, 2012  
water charge per month will be 44.<sup>00</sup>*

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**SECOND AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF TRES VALLES WEST**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TRES VALLES WEST is effective upon recording.

**RECITALS:**

A. On September 24, 1980, Harry R. Willis, dba Huajatolla Valley Land and Cattle Co. and Charles R. Fenimore, dba Mountain Winds, submitted the real property described in those certain Protective Covenants and Owners Association Agreement, recorded in the real property records of Huerfano County, Colorado in Book 358 at Page 508, and re-recorded on February 5, 1985 in Book 373 at Page 209 to its covenants, conditions and restrictions, as amended and restated by the following:

1. Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Tres Valles West, recorded in the real property records of Huerfano County, Colorado on June 8, 1999, at Reception Number 339533;
2. Amendment to Amended and Restated Declaration of Covenants recorded in the real property records of Huerfano County, Colorado on January 24, 2001, at Reception No. 347525 (implements court approved water augmentation plan pursuant to Case No. 97CW108(B), Water Division 2, Colorado);

(collectively, the "Original Declaration").

B. The Owners within the Tres Valles West Community desire to amend and restate the Original Declaration by virtue of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Tres Valles West ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. The Original Declaration provides for and allows for this Declaration in Article X, Section 1, which provides as follows:

The Association shall not:

- (a) unless it has obtained the prior written consent of at least [sic] sixty-seven percent (67%) of the Members and sixty-seven percent (67%) of the First Mortgagees (based on one vote for each First Mortgage owned):

...

- (vi) add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendment to any such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of such a request shall be deemed to have approved such request, and provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and further provided that this subsection (vi) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Property or improvements thereon;
- 1) voting;
  - 2) assessments, assessment liens or subordination of such liens;
  - 3) reserve for maintenance, repair and replacement of those elements of the Common Area which must be maintained, repaired or replaced on a periodic basis;
  - 4) insurance, including but not limited to fidelity bonds;
  - 5) rights to use of the Common Area;
  - 6) responsibility for maintenance and repair of any portion of the Property;
  - 7) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property;
  - 8) interests in the Common Area;
  - 9) convertability of Lots into Common Area or of Common Area into Lots;
  - 10) leasing of Lots or dwellings constructed thereon;
  - 11) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Lot;

- 12) any provisions which are for the express benefit of First Mortgagees, insurers or guarantors of First Mortgages.

D. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

G. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots; and

H. Pursuant to the requirements set forth in Article X, Section 1(a) of the Original Declaration, at least 67% of the Members and 67% of the First Mortgagees subject to the Original Declaration have approved this Declaration, provided that pursuant to Article X, Section 1(vi) of the Original Declaration, any mortgagee that does not respond within 30 days of a request for approval of amendments shall be deemed to have approved such amendments.

NOW THEREFORE, the Original Declaration is replaced and superceded by the covenants, servitudes, easements and restrictions set forth below:

#### **ARTICLE 1 DEFINED TERMS**

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

- (a) Act shall mean the Colorado Common Interest Ownership Act, *C.R.S. §38-33.3-101 et. seq.*, as it may be amended.

(b) Architectural Review Committee means the committee appointed by the Board of Directors for the purposes of reviewing any requests submitted to it, as more fully provided herein, and of ensuring the implementation of the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(c) Assessment shall include all Common Expense Assessments, water charges, and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association shall mean Tres Valles West Owners Association, a Colorado nonprofit corporation, and its successors and assigns.

(e) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(f) Board Architectural Committee means the committee appointed by the Board of Directors, comprised of Board members, for the purpose of making decisions on any requests submitted to and reviewed by the Architectural Review Committee, as more fully provided herein.

(g) Common Area shall mean all real property owned in common by all Owners, and all property owned and/or maintained by the Association for the common use and enjoyment of the Owners, if any. The Common Area shall include, but not necessarily be limited to, the private roads in the Community as shown on the Plat, the Water System, the stock tanks, and the trails in the Community.

(h) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(i) Community or Tres Valles West Community or Planned Community shall mean the planned community known as "Tres Valles West," and the real property subject to this Declaration and as further defined by the recorded Plats and the legal descriptions contained in this Declaration, and the Members of the Association.

(j) Declaration shall mean and refer to this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Tres Valles West, as amended, recorded in the office of the Clerk and Recorder of Huerfano County, Colorado.

(k) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(l) Lot shall mean and refer to any numbered plot of land shown upon any recorded Plat of the Property with the exception of Common Areas, if any.

(m) Member shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(n) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(o) Plat shall mean and refer to the plat(s) and/or map(s) of the Property and improvements that are subject to this Declaration and which are designated in the Plat recorded in the records of the Office of the Clerk and Recorder of Huerfano County. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(p) Property shall mean the property described in or which is subject to this Declaration, pursuant to the Original Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(q) Rules and Regulations shall mean any written instruments, however identified, which are adopted pursuant to the Bylaws for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.

(r) Water System shall mean and refer to the water rights, facilities, and easements used or reserved to be used to deliver domestic water to the Lots. Conditions in the augmentation plan for the Water System require a limitation of a maximum of 80 houses on the Property, with irrigated acreage no greater than 1,000 square feet per Lot. Livestock watering from the Water System is prohibited. Livestock may be maintained on the Property if provided with water from other water rights or water sources.

## ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is Tres Valles West. The name of the Association is the "Tres Valles West Owners Association".



Section 2.2 Property. The Planned Community is located in Huerfano County, State of Colorado. The Property of the Planned Community is described in the Original Declaration, in the Plat, and/or is consistent with the common scheme and plan for the creation and operation of the Community. The number of Lots currently included in the Community is eighty (80). Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon any recorded Plat of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area;
- (c) the right of the Association to transfer or convey ownership of any Common Area owned by the Association;
- (d) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area; and
- (e) the right of the Association to change use of, add or remove improvements to the Common Area.

Section 2.4 Delegation of Use. Owners may delegate their right of enjoyment to any Common Area to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot. If the Owner delegates rights to use the Common Area to tenants or contract purchasers who reside at their Lot, the Owner shall not be entitled to use the Common Area, except as necessary for ingress and egress to the Community.

Section 2.5 Disclaimer of Liability. The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

Section 2.6 Utility, Plat Easements. Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the Plat of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.7 Easement for Encroachments. If any portion of a structure encroaches upon the Common Area or upon any adjoining Lot, or if any portion of the Common Area encroaches upon any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

### ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one vote which shall be cast as a single vote and shall not be subject to fractional voting.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Tres Valles West Community as provided in this Declaration so as to protect the value and desirability of the Tres Valles West Community and the Lots. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area and the Water System. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Owner's Negligence. Notwithstanding anything to the contrary herein, in the event that the need for maintenance or repair of the Common Area or Water System is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article 4 of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board at a hearing after notice to the Owner.

Section 3.4 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Plat, its Articles of Incorporation and Bylaws, and any Rules and Regulations. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.5 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.7 Education and Training. As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

**ARTICLE 4**  
**COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES**

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses, water charges, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Assessments for Common Expenses and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by 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. Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lots equally.

Section 4.2 Basis of Assessments. Common Expense Assessments may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 4.3 Annual Assessment. The budget for annual Assessments shall be submitted to the Owners for approval as set forth in the Bylaws, as may be amended from time to time. Assessments for Common Expenses shall be allocated equally and shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors 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.

Section 4.4 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors;

provided that any such Assessment shall have the assent of 67% of the Members who are voting in person or by proxy at a meeting duly called for such purpose. At any meeting to adopt Special Assessments, the presence of Members present in person or by proxy entitled to cast 60% of the total votes in the Association shall be required to constitute quorum. If the required quorum is not met at any meeting to adopt Special Assessments, another meeting may be called pursuant to the Bylaws, and the required quorum at the subsequent meeting shall be lowered to 30% of the Members present in person or by proxy. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 4.5 Application of Payments. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 4.6 Effect of Non-Payment of Assessments.

(a) Any Assessment, water charge, fee or other charge provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors. If payment of any water service charge is not received within thirty (30) days of the due date, the Association may discontinue water service to such Owner's Lot as more fully provided in the Association's Rules and Regulations.

(b) Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Owner's annual Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 4.7 Assignment of Rents. If a Lot is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Lot are more than thirty (30) days delinquent, the Association may collect, and the occupant or lessee shall pay to the Association, the rent for any Lot owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Association's request. The Association shall send notice to the Owner by any reasonable means at least ten (10) days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Association's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Lot rental or a waiver of the Owner's obligations as provided in the Declaration. The Association shall not exercise this power where a receiver has been appointed with respect to a Lot or Owner, nor in derogation of the exercise of any rights to rents by a the holder of a first lien security interest of a Lot. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Lot in the same manner as any other Assessment under this Declaration.

Section 4.8 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or

transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.9 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Assessments.

## ARTICLE 5 WATER SYSTEM

Section 5.1 Water System. The Association has the responsibility for developing and maintaining the Water System. The Association has the authority to adopt Rules and Regulations, pursuant to the Bylaws, concerning the use and maintenance of the Water System, including imposing conditions on the use of the Water System by Owners or others, establishing requirements for connecting to the Water System, and establishing a rate schedule for tapping into the Water System and for water usage from the Water System.

Section 5.2 Water Charges. The Association may charge Owners tap fees, connection fees and water service fees for connecting to the Water System and using water through the Water System, as may be more fully provided for in the Rules and Regulations of the Association. The Association may charge for water usage based on usage, and such charges need not be equal for all Owners. Any such fees or charges charged by the Association shall be collectable by the Association in such amounts and in such manner as determined by the Association and shall be collectible in the same manner as Assessments.

Section 5.3 Restrictions. Conditions in the augmentation plan for the Water System require a limitation of a maximum of 80 houses on the Property, with irrigated acreage no greater than 1,000 square feet per Lot. Livestock watering from the Water System is prohibited. Livestock may be maintained on the Property if provided with water from other water rights or water sources.

## ARTICLE 6 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 6.1 Flexible Application of the Subsequent Covenants and Restrictions. All Lots within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. 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 or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be

unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 6.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.

(b) Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions pursuant to the Governing Documents.

(c) All fines imposed are collectable as Assessments.

Section 6.3 Use/Occupancy. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any adopted Rules and Regulations. Lots shall not be used for any purpose other than a residential dwelling (including all ancillary uses permitted by applicable zoning ordinances) except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Lot and do not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

Section 6.4 Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Lot by the child or parent of an Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing.

(b) Short term occupancies and rentals of Lots of less than 30 days shall be prohibited, without prior written permission from the Association.



(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association.

(d) Each Owner who leases his or her Lot shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.

(f) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(g) All occupancies of Lots shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Lot.

(h) Leases shall be for the entire Lot.

(i) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(j) The Association shall have the authority to adopt Rules and Regulations, pursuant to the Bylaws, regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 6.5 Maintenance of Lots and Improvements. Except during any period of construction or reconstruction, each Lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so that the same are visible from any neighboring Lot, the Common Area or any road. The Association, and its agents, shall have the authority, after giving the Owner 30 days written notice, to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Owner thereof all reasonable costs related thereto as an Assessment hereunder.

Section 6.6 Restrictions on Pets. No animals , livestock, reptiles, poultry or insects of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners or residents of each Lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident(s) of the Property. Horses may be kept on a Lot. An Owner's or resident's right to keep household pets shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such pet(s). Owners shall hold the Association harmless from any claim resulting from any action of their pets or the pets of their tenants, guests or other invitees.

Section 6.7 Nuisances. No nuisance shall be permitted within the Tres Valles West Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or resident or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Tres Valles West Community by Owners or residents. Further, no unlawful use shall be permitted within the Tres Valles West Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Tres Valles West Community or a portion thereof shall be observed.

Section 6.8 Vehicular Parking, Storage, and Repairs.

(a) Parking upon any Common Area shall be regulated by the Association.

(b) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the Property only if such parking or storage is done wholly within the enclosed garage located on a Lot or is otherwise screened so as to not be visible from any road, except that a tent, recreation vehicle or house trailer may be placed on a Lot for a maximum period of ninety (90) consecutive days in any one calendar year for camping. This restriction contained in this Section, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvements located thereon.