

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
RIVER RIM SUBDIVISION**

Gunnison County, Colorado

This Declaration is made by RIVER RIM CORPORATION, a Colorado corporation (referred to hereinafter as "Declarant"), as of the 2nd day of Aug, 1994.

PREAMBLE

Declarant is the Owner of property (hereinafter the "Property") located within Gunnison county, Colorado, and more particularly on the official plat for River Rim Subdivision recorded 8/2/94, 1994 as Reception No. 453401, of the records maintained by the Gunnison County Clerk and Recorder, (hereinafter the "Plat").

Declarant desires and intends to sell or transfer individual Lots comprising the Property and to impose upon the Lots, and other areas within the Plat, mutually beneficial covenants, conditions and restrictions under a general plan of improvement and development to enhance the value, desirability, attractiveness and salability of the Lots and for the benefit of all the Lots.

Therefore, the Declarant hereby declares that all of the lands within the Plat shall be held, sold, conveyed, used, improved and occupied in conformity with and subject to the following covenants, conditions and restrictions which are declared for the purpose of protecting the value and desirability of and which shall run with, all the Property, and be binding upon and inure to the benefit of all parties having any right, title or interest in any of the Property, or any part thereof, their heirs, successors, and assigns.

DECLARATION

NOW THEREFORE, in order to achieve the above described objects, Declarant does hereby declare the restrictions, covenants, easements, impositions of fees and architectural control hereinafter set forth, the same to become encumbrances upon and covenants running with the Property, it being the intent of the Declarant to encumber hereunder the Property described in the PREAMBLE. This Declaration shall be considered to be a part of any and all conveyances, transfers, leases, mortgages, trust deeds and other documents affecting all or any part of such Property whether or not specifically set forth in such documents. Anyone acquiring an interest in any part of the Property or any Lot shall be deemed to have accepted all the terms hereof and to be bound by each and every provision of this Declaration.

ARTICLE I - DEFINITIONS

1.1 "Association" shall mean and refer to the River Rim Homeowner's Association, Inc., a Colorado non-profit corporation created by Declarant to act for the Owners pursuant to this Declaration.

1.2 "Board of Directors" and "Bylaws" shall mean and refer to the Board of Directors and Bylaws of the Association.

1.3 "Committee" shall mean and refer to the Architectural Control committee, described in Article VI below.

1.4 "Common Area" shall mean and refer to those areas of real property, designated on the Plat of the Property as common area, open space, outlet, or similar designation, intended to be owned by or leased by the "Homeowner's Association" (as hereinafter defined) for the benefit of and/or devoted to the common use and enjoyment of the Owners.

1.5 "Common Facility" shall be any Improvement located within a Common Area.

1.6 "Declarant" shall mean and refer to River Rim Corporation, a Colorado corporation.

1.7 "Declaration" shall mean and refer to this Declaration of Covenants, conditions and Restrictions for River Rim Subdivision.

1.8 "Design Guidelines" shall mean and refer to the Design Guidelines as adopted and/or amended from time to time pursuant to Paragraph 4.2 below.

1.9 "Improvement" means any structure or artificial condition, whether temporary or permanent, including without limitation, a building, utility or water, sewer or gas line, landscaping, grading altering the natural land elevation, driveway, fence, sited, constructed, placed, fixed or created on, within or under a Lot, and including the acts of constructing, placing, fixing or creating an Improvement.

1.10 "Lot" shall mean and refer to any plot or parcel of land identified as such and shown upon the Plat.

1.11 "Open Space" shall mean any plot or parcel of land identified as such and shown on the Plat.

1.12 "Outlot" shall mean and refer to any plot of land identified as an "outlot" on the Plat.

1.13 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract purchasers, but excluding those having such interests merely as security for the performance of an obligation, such as mortgagees.

1.14 "Plat" shall mean the official subdivision plat of River Rim Subdivision described in the Preamble.

1.15 "Property" and "Properties" shall mean and refer to all of River Rim Subdivision, according to the recorded Plat.

1.16 "Property" shall mean all of the land described in the Plat.

ARTICLE II
CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION,
CRESTED BUTTE SOUTH METROPOLITAN DISTRICT

2.1 River Rim Subdivision is included within the service area of Crested Butte South Metropolitan District and all its Lots are entitled to all benefits and services provided by the District including road maintenance and sewer and water service. The Lots and their Owners will be subject to the rules and regulations of the District, and the District's charges, fees and special assessments.

2.2 The Declarant has entered into a Joint Use Agreement recorded in Book 739 at page 174 of the Gunnison county records (hereinafter the "Agreement") with the Crested Butte South Property Owners Association, Inc. (hereinafter the "CBS Association"). The Agreement provides that Owners are associate members of the CBS Association with certain rights and privileges hereinafter set forth. Each Owner must pay to that Association the sum of \$300.00 as a one-time charge at the time of initial conveyance of a Lot by the Declarant, and thereafter Owners will pay annual charges and special assessments lawfully assessed by CBS Association to its members. By the terms of the Agreement and by the terms of this Declaration, CBS Association may collect its annual charges and assessments applicable to any Owner and his Lot by exercising all of the rights of the Association to collect its charges and assessments, as provided in Article VIII of this Declaration, and each Lot shall be subject to a lien for payment of CBS Association charges and assessments in the same manner as provided for the Association and its charges and assessments under said Article VIII.

Members of CBS Association and their guests shall have the right to access and use the Common Areas and Facilities in the same manner as Owners.

As part of their rights as associate members of CBS Association, each Owner and his guests may access and use the parks, bus stop and other common areas and facilities in Crested Butte South Subdivision in the same manner as members of CBS Association. All other provisions of the Agreement are hereby incorporated in to these covenants and are binding upon Declarant, the Association and Owners.

ARTICLE III - THE ASSOCIATION

The Lots shall be subject to this Declaration, the terms, conditions and limitations whereof shall be administered by the Association which may adopt separate Design Guidelines to be administered by an Architectural Control Committee as hereinafter set forth.

3.1 **Membership.** Each Owner shall be a member of the Association. His membership shall be appurtenant to and may not be separated from ownership of his Lot.

3.2 **Classes of Voting Membership and Voting Rights.** The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and each shall be entitled to one vote for each Lot owned. If more than one person or legal entity holds an interest in a Lot, the vote for such Lot shall be cast in the manner provided for in the Articles of Incorporation of the Association, or as the several Owners may determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to ten (10) votes for each Lot owned by it, or its officers. The Class B membership shall terminate at such time as the Class B member voluntarily converts its Class B membership to Class A membership in the Association, or Declarant or its officers no longer own any Lot, or upon the lapse of ten (10) years from the date of recording this Declaration, which ever shall first occur.

ARTICLE IV - ARCHITECTURAL CONTROL

4.1 **Architectural Control Committee.** There is imposed a regimen of architectural control upon the Lots, as set forth in this Article. No improvement is permitted within any Lot unless the Owner thereof has fully complied with the terms of this paragraph. There is hereby established an Architectural Control Committee (the "Committee") for River Rim Subdivision, composed of three (3) persons. The members of the Committee shall be appointed by Declarant so long as the Declarant is a Class B member of the Association. Thereafter, the members of the Committee shall be appointed by the Board of Directors of the Association, provided, however, that at least two (2) of the members shall be Owners. Committee members shall serve at the pleasure of the Declarant or the Association, as the case may be. The Committee shall be constituted and shall perform the duties imposed on it by this Declaration. The decision of a majority of the Committee members shall be the decision of the Committee. The Committee may designate a representative to act on its behalf and may employ consultants to assist in the performance of its functions. Committee members shall be entitled to reasonable compensation for services performed pursuant to this Declaration, which shall be fixed and paid by the Association. The Association shall have the right to impose a reasonable fee for the Committee's review of plans and specifications submitted to it for approval in accordance with the Declaration.

4.2 **Design Guidelines.** The Association shall adopt and revise from time to time written Design Guidelines for use by the Committee in approving or disapproving Improvements to Lots proposed by Owners. The Guidelines must conform to this Declaration, and in the event of any conflict between the two, the Declaration shall control. The Design Guidelines shall provide for reasonable uniformity in quality of construction, building size, height and location, and external appearance, in order to assure that River Rim Subdivision will be and remain a harmonious community, preserving the investment of its Owners in their homes and promoting the general welfare of the Owners. In passing upon Owner's applications, the Committee will apply the Design Guidelines in a fair and reasonably consistent manner, and will not except or vary from the terms of the Design Guidelines in its determination, without prior approval by a majority of the members of the Association voting at a meeting of members held for that purpose.

4.3 **Design Guidelines Committee Procedures.** Application for approval of any Improvements proposed for a Lot shall be submitted to the Committee in writing, on such forms as the Committee may prescribe, including such materials as the Committee may prescribe. The Committee must render its decision within thirty (30) days of a completed submission, and may hold a hearing on the application, with seven (7) days notice thereof to the applicant and Owners of adjoining Lots at the sole discretion of the Committee, within such thirty (30) day period.

4.4 **Liability and Enforcement.** Neither the Committee nor the Declarant, nor their respective successors, shall be liable in damages to anyone submitting plans to the Committee for approval, or to any Owner affected by any decision of the Committee, by reason of a mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any application. Each Owner or other person who submits an application to the Committee agrees, by submission of such that he will not bring any action or suit against the Declaration, the Committee, its members, or consultants. Approval by the Committee shall not be deemed to constitute compliance with the requirements of any building codes and it shall be the responsibility of the Owner to insure compliance therewith.

ARTICLE V - LIMITATIONS ON LAND USE

5.1 **General.** Construction of Improvements within a Lot, or activities with a Lot, or use of land within a Lot by an Owner, his guests, invitees, agents or

lessees, shall be permissible unless expressly limited or forbidden under this Declaration.

5.2 **Residential Use.** Each Lot will be limited to residential use and no improvement inconsistent with such limited use shall be erected, and placed within such Lot, either temporarily or permanently. One residential building together with an attached ancillary living unit may be constructed, provided that the ancillary living unit shall be not less than 600 square and not more than 1,000 square feet of living space.

5.3 **Specific Restrictions.** In addition to the foregoing, the following restrictions on use of the Property are imposed:

A. **In General.** No noxious or offensive activities shall be conducted on any Lots nor shall anything be done or be caused to be done to any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner.

B. **Animals.** No animals shall be kept or maintained on the Property, except the usual domestic household pets; and in such case, such household pets shall be kept confined to the Owner's Lot or attached to a leash so as not to become a nuisance. No animals may be raised for commercial purposes.

C. **Limited Access.** There shall be no access to any Lot on the perimeter of the Property except from platted roads within the Property.

D. **Fences.** No fences, walls, or other barriers shall be permitted for the purpose of enclosing or demarcating Lot boundaries unless permitted by the Committee. The Association may maintain an adequate boundary fence around the Property in order to assure that neighboring Owners will not suffer interference in their land use by reasons of activities of Owners.

E. **Drainage.** Since the Property is situated in mountainous terrain, there will be a substantial amount of natural surface water drainage and runoff flowing over the area. No Owner or other persons shall interfere with or redirect the natural course of any such drainage and runoff so as to cause an unnatural flow onto or across the land of another. All drainage easements shown on the Plat shall be observed and structures and water courses therein shall not be restricted, changed or eliminated by any Owner.

F. **Temporary Structures.** No temporary structure, excavation, basement, trailer, or tent, shall be permitted within a Lot, except as may be necessary during construction of permanent improvements, and as authorized by the Committee.

G. **Water and Sewage.** Each structure designed for occupancy or use by humans shall connect with the central water and sewage facilities provided by the Crested Butte South Metropolitan District and no undivided or separate water or sewage facilities shall be permitted within the Property. No private well shall be permitted on the Property, nor shall any facility be used for the private disposal of sewage. Mechanical garbage disposal facilities shall be provided and maintained in each kitchen or food preparing area.

H. **Unsignificance.** No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing:

- i. All unsightly structures, facilities, equipment, objects, and conditions shall be enclosed within a structure approved by the Committee.
- ii. Repairs of equipment and vehicles must be conducted within a structure and no dismantled equipment, or vehicles may be kept, except within a structure.
- iii. Service areas and facilities for hanging, drying, or airing clothing or fabrics shall be enclosed by a structure approved by the Committee.
- iv. Pipes and/or tanks for water, gas, oil, sewer, drainage, or other purposes; wires, poles, utility meters, and other utility facilities shall be enclosed by a structure approved by the Committee or shall be below the surface of the ground. If, at the time of the occupancy of the structure, connections to nearby underground electric lines or telephone lines are not available, then temporary poles or wires for electric or telephone service, as the case may be, may be installed to a reasonably necessary height provided that they shall be promptly removed at the expense of the Owner after such connections become available.
- v. The size and location of any exterior television or radio antenna or satellite dish shall be subject to approval by the Committee which may, in its discretion, forbid the installation of any such exterior antenna.

I. **Signs.** No signs or advertising devices of any nature shall be erected or maintained within any Common Area, or within a Lot except as permitted by the Committee, which shall adopt uniform rules with respect to signs within the Property, including signage for the development, road and other warning or informational signs, and signage for commercial uses. Signs shall be placed or located as directed or approved by the Committee. Neon or brightly lighted signs or self-lighted signs shall not be permitted.

J. **Lawn Watering.** In order to conserve water and to maintain the rustic nature of the Property, watering of lawns or gardens shall only be permitted in conformity with landscaping plans approved by the Committee. Lawn watering may be restricted or suspended by the Association in times of water shortage, and will be subject to the Rules and Regulations of the Crested Butte South Metropolitan District.

K. **Maintenance.** All Lots, including all improvements, shall be kept and maintained by the Owner thereof in a clean, safe, attractive, and sightly condition and in good repair. An Owner shall do no act or work that will impair the structural soundness of any improvement or impair any easement.

L. **Light, Sounds and Odors.** No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare, no sound shall be emitted on any Lot which is unreasonably loud or annoying, and no odor shall be emitted within any Lot which is noxious or offensive to others.

M. **Refuse.** No refuse, including without limitation trash, garbage, lumber, grass, shrub or tree clippings, plant waste, compost, ashes, metals, bulk materials, and scrap materials shall be allowed to accumulate on any Lot. Each Owner shall provide suitable covered noiseless receptacles for the collection of such refuse in preparation for regularly scheduled periodic pickup. Refuse shall be stored for such pickup in such containers which shall, in turn, be enclosed in an approved structure so as to be screened from public view and protected from disturbance. No refuse may be thrown or dumped on any of the Property. The burning of refuse out-of-doors shall not be permitted. No incinerators or other devices for the burning of refuse indoors shall be constructed, installed, or used by any person except as approved by the Committee and Gunnison County. All trash receptacles shall be constructed to prevent any animals, including wild animals such as bears, from gaining access thereto.

N. **Parking and Storage.** Parking of vehicles on any Lot is permitted only within parking spaces constructed pursuant to approval by the Committee, except that vehicles may be parked in other areas while loading and unloading. Storage of equipment and implements shall require enclosure in a structure approved by the Committee.

O. **Restrictions on Burning.** No outdoor burning of trash, lawn clippings or any other materials shall be permitted. No indoor burning shall be permitted except in a fireplace or woodstove conforming to subparagraphs below.

P. **Hazardous Activities.** No activities shall be conducted on any Lot, and no improvements shall be constructed on any Lot, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing: no firearms shall be discharged within any Lot, nor any fireworks permitted within any Lot; no open fires shall be lighted or permitted with a Lot except in a contained barbecue unit while attended and in use for cooking purposes or except in a safe and well-designed interior fireplace or except such controlled and attended fires as are required for cleaning or maintenance of Property; and no hazardous materials as defined by Federal or State law shall be permitted with the Property.

Q. **Occupancy.** No portion of any Lot shall be used for residence, living, or sleeping purposes other than rooms designed for such purposes in a completed structure. No living or sleeping room in any structure shall be used for living or sleeping purposes by more than it was designed to accommodate.

R. **Mining and Drilling.** No Lot shall be used for the purpose of mining, quarrying, drilling, boring, exploring for, or removing water, oil, gas, other hydrocarbons, minerals, rocks, stones, gravel or earth.

S. **Fireplaces and Stoves.** All structures within the Property proposed to include fireplaces or stoves, must construct or install the same in conformity with any applicable state or local law or regulation governing their type, construction or installation; in the event that such laws or regulations are amended, enacted or reenacted following initial construction or installation, then such fireplaces or stoves must be brought up to the requirements of such laws or regulations within a reasonable time after such change.

ARTICLE VI - ASSOCIATION ACTIVITIES

6.1 **Duties and Authority.** The Association shall have the duty of providing management, operation, maintenance, repair, landscaping, and improvements for the Common Areas and Facilities conveyed to the Association by the Declarant and described in the Plat. It shall be further responsible to provide such insurance as may be necessary or desirable with respect to the Common Areas and Facilities. The Association may employ a managing agent to perform its duties hereunder. Such agent shall have the powers and duties set forth in the Bylaws of the Association.

6.2 **Costs of Association.** The Association shall perform its duties and obligations prescribed by this Declaration, or additional duties or obligations which may be assumed by the Association, upon a cost basis and shall have the right to establish appropriate cash reserves to insure the performance of its duties and obligations.

6.3 **Assessments and Charges.** No less often than annually the Board of Directors of the Association shall adopt a budget for the coming calendar year which shall provide adequately for the Association's anticipated costs of operation for such year and which shall fix the date or dates when such budget sums shall be due, whether by lump sum or installments. Within thirty (30) days thereafter the Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of all Owners to consider ratification of the budget not less than fourteen (14) days or more than sixty (60) days after mailing or other delivery of the summary. The budget will be deemed ratified unless at the meeting so-called sixty percent (60%) or more of the Owners reject the budget. In the event of rejection the preceding budget shall continue in effect until new budget ratification occurs. The budgetary amount so ratified shall constitute Common Expenses and become a charge against Owners and Lots on the date the budget is ratified, which shall constitute an assessment of the budgetary amounts against the Lots and Owners on such date. By following the same process, the Board may modify the budget to meet unanticipated needs of the Association and any additions to the budget resulting therefrom shall constitute Common Expenses and become a charge and assessment against Owners and Lots on the date the modified budget is ratified.

The Common Expenses incurred by the Association in its operation shall be borne by the Owners upon an assessment basis. Each Owner of a Lot by acceptance of a deed therefor, whether or not so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association his respective assessment as herein provided. Each Owner and Lot shall be responsible for an amount equal to the fraction of the total common Expenses that the Lot bears to the total number of Lots in the Subject Land; provided however, that:

- A. Any common expense or portion thereof benefitting fewer than all of the Lots shall be assessed exclusively against the Lots benefitted.
- B. Costs of common insurance shall be assessed in proportion to risk.
- C. Costs of utilities shall be assessed in proportion to usage.
- D. If any common expense is caused by the misconduct of an Owner, the Association shall assess that expense solely against that Owner's Lot.

The assessments made shall be based upon the Association's cash requirements deemed to be such aggregate sum as the Board of Directors of the Association shall from time to time determine is to be paid by all of the Owners, including Declarant, for unsold lots, to provide for the payment of all estimated expenses incurred in connection with the maintenance and operation of the Common Areas and Facilities, which sum may include, but is not limited to, expenses of

operation, management, taxes and special assessments until separately assessed, insurance premiums on Common Areas and Facilities thereon (including fire insurance with extended coverage, vandalism and malicious mischief insurance, public liability and other insurance), landscaping and care of grounds, repairs and renovations, trash and garbage collections, wages, common water and sewage service operating expenses and other common utility charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent, or Board of Directors, under or by reason of this Declaration, the payment of any deficit remaining from a previous assessment period, the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the Common Areas and Facilities. Assessments shall also include the costs of correcting a violation of this Declaration pursuant to Article IX hereof. The omission or failure of the Board to fix the assessment for any assessment period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. The assessments for estimated Common Expenses shall be due as prescribed in each budget and the Board of Managers or Managing Agent shall prepare and deliver or mail to each Owner an itemized statement showing the estimated or actual expenses for the assessment period and the proportionate amount due by such Owner. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Lot.

6.4 Lien for Assessments. The Association shall have lien rights against any Lot to collect delinquent assessments and fines under this Declaration, in the manner and to the extent provided by Colorado Revised Statutes §38-33.3-316, effective the date hereof, which provision is adopted and incorporated herein by reference thereto, as though restated herein. In the event that such statute may hereafter be amended or rescinded, then notwithstanding such action, the said provisions shall continue to define and control the Association's lien rights with respect to this Declaration, except to the extent limited or precluded by Colorado law.

The Association may, by appropriate Bylaw provision, adopt a regimen of collecting fees, late charges, attorney's fees, fines and interest, as permitted by law, which shall be enforceable as assessments under this provision.

6.5 Personal Obligation of Owner. The amount of the Common Expenses assessed against such Lot shall also be a personal obligation of the Owner thereof at the time the assessment is due. Suit to recover a money judgment for unpaid assessments, and any penalties thereon shall be maintainable without foreclosing or waiving the lien securing same.

6.6 Payment by Encumbrancer. Any encumbrancer holding a lien on a Lot may pay any unpaid assessment payable with respect to such Lot, and upon such payment such encumbrancer shall have a lien on such Lot for the amounts paid of the same priority as the lien of his encumbrance.

6.7 Status of Delinquent Owner and Lot. Any Owner more than thirty (30) days delinquent shall be suspended from membership in the Association and shall not be entitled to participate in Association matters. Neither the Owner nor his Lot shall be entitled to use any of the Common Areas or Facilities until the delinquency and penalties shall be fully made up; the Association shall have the right to discontinue water and sewerage service, road access or access to any of the other Common Areas and Facilities, to any Owner suspended from membership for the period of suspension. In the event that a Lot for which any Common Expenses or charges have not been paid is conveyed or transferred to another by operation of law, then such Lot shall continue in the status of suspension until all delinquencies are fully made up by the new Owner.

ARTICLE VII - VARIANCES

The Declarant acknowledges that the effect of these Restrictions may work a hardship on one or more Owners due to unforeseeable circumstances or change conditions. The Association may grant variances or other relief from Design Guidelines, but may only do so after public meeting with notice to all Owners, and upon a finding of that the variance sought is consistent with the overall purposes of these Declarations. The Association cannot grant variances dealing with the County required ridgeline setback.

ARTICLE VIII - ENFORCEMENT

8.1 **By Whom.** The provisions of this Declaration may be enforceable by the Declarant, by the Association, by any Owner, by CBS Association or by Gunnison County. An Owner, CBS Association or Gunnison County shall have the right to enforce the provisions of this Declaration only after giving the Declarant and the Association notice of an alleged violation of the provisions hereof and upon failure of the Declarant or the Association to initiate remedial action as hereinafter provided within thirty days after receipt of such notice. The Declarant's rights to enforce shall terminate at such time as his Class B membership shall terminate, or 5 years after the recording date of this Declaration.

8.2 **Enforcement by Correction.** The Declarant or Association shall have the right to enforce all of the conditions of this Declaration relating to appearance and maintenance of any Lot or of the Improvements thereon by going upon the Lot and correcting any violation. Any such action shall be taken in the following manner:

- A. Upon receiving notice of any violation, the Declarant or Association shall verify the fact by an inspection of the Lot.
- B. Upon verification of a violation, notice in writing shall be given to the Owner of such Lot, which notice shall identify the Lot and the Owner thereof and shall describe the violation and shall require the Owner to correct such violation or commence correction activities reasonably leading to prompt correction, within ten (10) days following such notice.
- C. Upon failure to correct any violation or to assure the Declarant or Association that such violation will be corrected, the Declarant or Association may cause the violation to be corrected. Such correction may include, but shall not be limited, to, decorating or repairing Improvements, removal of unsightly objects, landscaping, and removal of any vehicle or object violating the parking or storage restrictions under paragraph 5.3(N) hereof.
- D. The correction of any violation made by the Declarant or Association in accordance with these provisions shall be at the expense of the Owner. The expense shall be deemed to include not only costs actually expended, but also a normal percentage for overhead and any and all other costs of management, including reasonable attorney's fees.
- E. The Owner shall be personally obligated for all expenses incurred by the Declarant or Association and as security for such obligation the Declarant or Association shall have a lien for any amounts expended hereunder, which lien may be filed and enforced

in a manner similar to the lien of the Association for unpaid assessments as provided in Article VI hereof.

8.3 **Enforcement by Law.** The enforcement of the provisions of this Declaration may also be by a proceeding in law for a prohibitive or mandatory injunction or by a suit or action to recover damages. A judgment in any action at law or in equity shall include reasonable attorney's fees. In addition thereto, the Declarant or Association may exclude any Owner or the guests of any Owner from the use and enjoyment of the General common Areas and any facilities thereon.

ARTICLE IX - MAINTENANCE OF LOTS AND IMPROVEMENTS

Each Owner shall keep his Lot free from any condition constituting a violation of this Declaration. Each Owner shall maintain and keep in good repair all Improvements contained on such Owner's Lot, including painting, staining or otherwise preserving all exterior surfaces. It is the responsibility of each Owner to keep adequate fire, casualty and public liability insurance coverage on his Lot and Improvements.

ARTICLE X - MISCELLANEOUS

10.1 **Estoppel Certificate.** Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner or any person with any right, title or interest in a Lot, or intending to acquire any right, title or interest in a Lot, the Association shall furnish a written statement setting forth the amount of any unpaid assessments, charges, fines, or penalties, if any, due or accrued under this Declaration with respect to any Lot or portion thereof. Such statement shall, with respect to the party to who it is issued, be conclusive against the Association and all other parties that no greater or other unpaid amounts were then due or accrued.

10.2 **Limited Liability.** Neither the Declarant or Association nor any agent or employee thereof shall be liable to any party for any action or for any failure to act with respect to any matter under this Declaration if the action taken or failure to act was in good faith or was without malice.

10.3 **Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of any provision.

10.4 **No Waiver.** Failure to enforce any provision of this Declaration shall not operate as a waiver or any such provision nor of any other provision hereof.

10.5 **No Partition.** The Common Areas and Facilities shall be owned by the Declarant and the Association in trust for all of the Owners of the Lots and shall remain undivided and no Owner shall bring any action for partition or division of the Common Areas. In the event that the Association becomes defunct or is dissolved voluntarily or by operation of law, then the Common Areas and Facilities shall become the property of all the Owners in common.

10.6 **Mechanic's Lien Rights and Indemnification.** No labor performed or materials furnished and incorporated on a Lot with the consent or at the request of an Owner or his agent or his contract or subcontractor shall be the basis for the filing of a lien against any other Lot not expressly consenting to or requesting the same, or against the Common Areas. Each Owner (indemnitor) shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the land of any other Owner or against the

common Areas for construction performed or for labor, materials, services or other products.

10.7 Right to Mortgage. Any Owner shall have the right from time to time to mortgage or encumber his Lot by deed of trust, mortgage or other security instrument. Nothing in this Declaration should be construed to mean that any Owner holds an interest in the Common Areas or Facilities, except his rights as a member of the Association, and no purported encumbrance of the Common Areas or Facilities shall be effective as against the Declarant or the Association.

10.8 Assignment. The Declarant may from time to time transfer, assign, an/or delegate its powers, rights, and obligations under this Declaration to the Association, except as otherwise specifically provided herein. The Declarant shall be deemed to have assigned its powers, rights, and obligations to the Association upon its bankruptcy, or dissolution. Such transfer, assignment and/or delegation shall be effected by the recording with the Clerk and Recorder of Gunnison County a notice identifying this Declaration and specifically describing the provisions thereof affected by such transfer.

10.9 Amendment. The Declarant shall have the right to amend, delete, or supplement any provision of this Declaration at any time prior to the sale of 75% of the Lots included within the Property, provided that any such amendment, deletion, or supplement shall not have a materially adverse effect upon the vested property rights of any of the then Owners. The Owners shall have the right to amend, delete, or supplement any provision of this Declaration by means of an affirmative vote given by the Owners of two-thirds of the Lots. Such right to amend shall include the right to effectively transfer to the Association any powers, rights, and obligations granted to the declarant under the Declaration. Such vote shall be taken at a meeting called for such purpose. The Owner of each Lot shall have one vote. The Declarant's right to amend this Declaration, shall be subject to prior approval of Gunnison County, which approval shall be in recordable form and shall be recorded with the amendment.

10.10 Colorado Common Interest Ownership Act. The State of Colorado has enacted the Colorado Common Interest Ownership Act, Colorado Revised Statutes, §38-33.3-100 *et seq.*, which affects the relationships between the Declarant, Association and Owners. That Act requires certain statements and disclosures to be contained within this Declaration. Certain of the terms used hereinafter are defined by that Act.

- A. The name of the common interest community is the RIVER RIM SUBDIVISION and the name of its association is THE RIVER RIM HOMEOWNER'S ASSOCIATION. River Rim Subdivision is a planned community.
- B. RIVER RIM SUBDIVISION is situated wholly within Gunnison County.
- C. The legal description of RIVER RIM SUBDIVISION in the Preamble.
- D. The maximum number of units that the Declarant reserves the right to create is 24.
- E. Description of the boundaries of each unit (Lot) will be contained in the Plat to be subjected to this Declaration.
- F. The Common Areas and Facilities are described in the Plat; however, generally, they consist of the River Rim Open Space depicted on the Plat.

G. No limited common elements are planned for RIVER RIM SUBDIVISION.

H. Development rights and other special declarant rights reserved by the Declarant, all of which apply to the Property, and which may be exercised for a period not to exceed ten (10) years from the date hereof, are as follows:

- i. the Declarant has reserved the right to enjoy a disproportionate voting privilege in the Association for so long as the Declarant, or its officers, retain ownership of one or more Lots. Declarant will be entitled to 10 votes for each such Lot, while other Owners would be entitled to only one vote per Lot; therefore, Declarant will maintain control of the Association until all the Lots are sold by Declarant.
- ii. The Declarant has reserved the right to appoint members of the Architectural Control committee for so long as the Declarant, or its officers, retain ownership of one or more Lots.
- iii. The Declarant has reserved the right to enforce the provisions of this Declaration for so long as the Declarant, or its officers, retain ownership of one or more lots.
- iv. The Declarant has reserved the right to complete improvements indicated on the Plat to be filed for RIVER RIM SUBDIVISION, and to use easements through the Common Areas for the purpose of making improvements within RIVER RIM SUBDIVISION.
- v. The Declarant has reserved the right to amend this Declaration for so long as the Declarant, or its officers retain ownership of one or more Lots.

I. Development rights described in subsection H above may be exercised with respect to any parcel of real estate within the Property at any time, without limitation.

J. Notices to Owners which are required or permitted under this Declaration may be given by depositing the notice in the U.S. mails, postage prepaid, first class mail, addressed to the address for Owners contained in their deed to a Lot, or the address maintained for such Owner by the Gunnison County Treasurer, whichever is more current.

Signed and dated at Boulder, Colorado, as of the date first above written.

DECLARANT:

RIVER RIM CORPORATION, a Colorado corporation

By: 
Daniel P. Gallagher, President

2955 Valmont, Suite 310
Boulder, Colorado 80301
(303) 939-9867 - FAX: 939-9874

ATTEST:

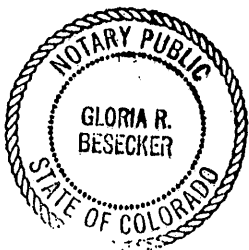
Myles Arber
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 1ST day of August, 1994, by Daniel P. Gallagher, President and Myles Arber, Secretary of River Rim Corporation, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 9/4/94



Gloria R. Besecker
Notary Public