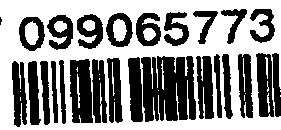


STATE OF COLORADO

EL PASO COUNTY

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**AMENDED AND RESTATED  
RESTRICTIVE COVENANTS**

**SOUTHFORK SUBDIVISION**

These Amended and Restated Restrictive Covenants are intended to modify and replace those certain Restrictive Covenants filed of record on February 19, 1999 in the El Paso County Colorado Real Estate Records under file number 099026356.

Southfork Development, Ltd., Trustee, being authored to do so, being owner as shown by deed of record in El Paso County Records. Tax No. 43000-00-198 of that certain parcel of land situated in El Paso County, which has been subdivided and designated as Southfork, Unit 1, a plat of which is of record in R#99026355 of the plat records of El Paso County, Colorado, and made a part hereof by reference, and not having heretofore sold any of the lots described thereon, does hereby agree and bind the owners, their successors and assigns, that the following restrictions, limitations, easements and covenants shall be binding on all purchasers of lots of said subdivision known as Southfork, their heirs, successors, and assigns, as follows:

1. Intent. Declarant intends by this Declaration to impose upon the property mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of property within Southfork Subdivision. Declarant desires to provide a flexible and reasonable procedure for the overall development of the property and the property owners' association, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property as is now or may hereafter be submitted to this Declaration.

2. Submission of Real Estate. Now, therefore, Declarant hereby declares that all of the property described in the Plat referred to, and any additional property that is, in the future, added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property submitted to this Declaration and which shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, successors in-title and assigns, and shall inure to the benefit of each Owner thereof.

3. CCIOA Declaration. This Declaration is made pursuant to the Colorado Common Interest Ownership Act, Article 33.3 of Title 38 of the Colorado Revised

Statutes, hereafter sometimes referred to as "CCIOA". All terms herein shall be defined, and declarations herein shall be construed in accordance with CCIOA.

a) Name. The name of the common interest community is Southfork Subdivision (hereafter sometimes referred to as "Southfork"), and the name of the association is Southfork **Homeowners**<sup>1</sup> Association, Inc. (hereafter sometimes referred to as the "Association").

b) County. Southfork is situated in El Paso County, Colorado.

c) Location. The real estate included in the Southfork Subdivision is generally located in Section 15, Township 13 South, Range 64 West of the 6<sup>th</sup> Principal Meridian, El Paso County Colorado, and is more specifically described upon the Plat recorded at Reception No. 99026355 of the El Paso County records, which is incorporated herein by reference and is sometimes referred to as the "Plat".

d) Maximum Number of Units. Declarant reserves the right to create a maximum of 1200 units.

e) Unit Boundaries. The boundaries of each unit created by this Declaration, including the unit's identifying number, are specifically described upon the Plat. The boundaries of each unit in Phases II through V have not yet been determined, but shall be shown on an amended Plat which includes those phases if and when those phases are submitted to this Declaration.

f) No Limited Common Elements. There are no limited common elements as defined in C.R.S. 38-33.3-103(19). The real estate that is or must become a common element, as defined in C.R.S. 38-33.3-103(5), is specifically described upon the Plat.

g) Subsequent Limited Common Elements. No real estate, except real estate subject to development rights, will or may be allocated subsequently as limited common elements.

h) Declarant's Reserved Development Rights. Declarant reserves the following development rights and other special Declarant rights:

As to all other property (which is that property not within Phase I as shown on the Plat), Declarant reserves as fully as allowed by law the right to develop without restriction.

The Declarant makes no assurances as to the exercise of its development rights, including the boundaries of property which may be the subject to development rights, the time of development, the order of

1) Association name incorrect in original document, corrected in 201077061 – see appendix A

development, land use standards, or that development rights will be exercised on any or all other property.

Declarant's reserved rights include, but are not limited to, the right to submit to this Declaration one or more parcels of the property in any sequence, to configure and reconfigure units and common elements, including roads and easements, to submit the property to the jurisdiction of governmental entities, to create common elements and limited common elements, to create commercial, school, government and church units, to subdivide units or convert units into common elements, to convert common elements into units, to establish different land use standards for subsequent phases, to withdraw one or more parcels of the property, to transfer to any other person the right, privilege and option to exercise these development rights, to convey or lease property, whether improved or unimproved, to the Association. Declarant makes no assurances that any or all of the development rights will be exercised, or if exercised, that such rights will be exercised on any other portion or parcel of property.

Declarant's reserved development rights and special rights must be exercised within 20 years. If, and to the extent, the development rights and special rights of Declarant have not been exercised on or before the last day before the expiration of 20 years, such rights shall lapse.

Any development right shall be exercised by an amendment to this Declaration, pursuant to C.R.S. 38-33.3-210. No development right shall be exercised without the written approval of the Owner of the property to be submitted to this Declaration.

i) Time of Exercise of Development Rights. Any development right may be exercised with respect to different parcels of real estate at different times. Declarant makes no assurances as to the boundaries or order of parcels or portions of parcels that may be subjected to the exercise of each development right. If Declarant exercises a development right in any portion of the real estate subject to that development right, that development right may or may not be exercised in all or in any other portion of the remainder of that real estate.

j) Other Conditions. There are no other conditions or limitations under which the rights described in Paragraph (h) may be exercised or will lapse.

k) Allocated Interests. Pursuant to C.R.S. 38-33.3-207, there is allocated to each unit the allocated interests as follows:

The fraction of the common expenses of the Association allocated to each unit shall be as follows:

A unit, as defined in C.R.S. 38-33.3-103(30), shall be defined as one lot for separate ownership, as described on the Plat. Each unit Owner, as defined in C.R.S. 38-33.3-103(31), shall pay that fraction of the common expenses as determined by multiplying a fraction which numerator is one and which denominator is the number of units for which Declarant has not reserved development rights. If units are added to Southfork Subdivision, the number of those units shall be added to the denominator in the formula above. If units are withdrawn from the Southfork, the number of units withdrawn shall be subtracted from the denominator in the formula above.

Each unit Owner shall be a member of the Association and shall have one vote in the Association for each unit owned. Membership is appurtenant to and inseparable from unit ownership.

l) Use Restrictions. There are the following restrictions on the use, occupancy, and alienation of the units in Southfork Filing One **and Two**<sup>1</sup>.

There are no restrictions on the amount for which a unit may be sold or on the amount that may be received by a unit Owner on sale, condemnation or casualty loss to the unit.

In the case of sale, condemnation or casualty loss of the Association property, any amount that may be received will be retained by the Association and will not be distributed to the unit Owner, except as required by statute.

In the case of the termination of the Association, its assets will be distributed to unit Owners in accord with the Articles of Incorporation for the Association.

m) Sales Offices and Other Easements. Declarant may maintain any sales offices, management offices and models in Southfork on any unit which Declarant owns. There is no limit to the number of such offices and models, or the size, location or relocation of such offices or models. Offices and models are not common elements. Declarant reserves the right to remove any sales office, management office or model within two years of ceasing to use such offices or models, and such removal within two years shall be deemed "prompt" removal. Declarant may assign its rights under this section to one or more persons selling housing in Southfork.

Declarant may maintain signs on the common elements advertising Southfork and the sale of homes in Southfork.

Declarant reserves all easements in and through the common elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special Declarant rights.

1) Southfork Subdivision Filing No. 2  
added to covenants in 201110318 –  
see appendix A

Declarant reserves the right to use the water, water well, drainage, utility and roadway easements in Southfork for the purpose of construction, operation, maintenance, repair, replacement, relocation, expansion and extension of water wells, collection lines, water treatment, pressurization, storage and distribution lines and related electrical and control lines for the purpose of use of Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifer water now owned or reserved or later acquired by Declarant, his heirs, successors and assigns and for use at locations outside the boundaries of Southfork

Subject to other provisions of this Declaration, and the Articles, By-Laws, and Rules of the Association, each unit Owner has (1) an easement in the common elements for the purpose of access to the Owner's unit and (2) an easement to use the common elements and all other real estate that must become common elements for all other purposes. Any unit Owner may delegate the Owner's right of enjoyment of common elements to the members of the unit Owners family, tenants and social invitees, subject to reasonable regulations adopted by the Association. The unit Owner's easement described in this subsection shall be appurtenant to and shall pass with the title to every unit. However, unit Owners have no easement in the water supply system or any portion of the water supply system. The water supply system shall be transferred to the Bobcat Meadows Metropolitan District. (DBA - Southfork Metropolitan District) which shall own and operate the water system, to include a contract for a licensed water treatment plant operator and professional management of the water system.

n) Notice. Notice of matters affecting Southfork may be given to unit Owners by the Association and by other unit Owners by first class mail, postage prepaid addressed to the last known address of the unit Owner as shown on the records of the Association.

4. Period of Declarant Control. There shall be a period of Declarant control of the Association, during which period Declarant, or persons designated by it, may appoint and remove the officers and members of the executive board. The period of Declarant control terminates no later than either 60 days after conveyance of 75% of the units that may be created to unit Owners other than Declarant, or two years after the last conveyance of a unit by the Declarant in the ordinary course of business, or two years after any right to add new units was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant control, but, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. [See C.R.S. 38-33.3-303(5)]

5. Responsibilities for Common Elements. Maintenance, repair or replacement of any common element, drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of Southfork shall be the responsibility of the Association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement, or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. [See C.R.S. 38-33.3-307(1.5)]

Each unit Owner shall maintain and repair the Owner's unit, and is alone liable for all expenses in connection with real estate owned by the unit Owner. Each unit Owner shall maintain and repair such pipes, meters and facilities as are necessary to connect the residence and other structures on the unit to the Bobcat Meadows Metropolitan District's water supply system.

Declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit Owner and no other portion of Southfork is subject to a claim for payment of those expenses. Any income or proceeds from real estate subject to development rights inures to the Declarant. [See C.R.S. 38-33.3-307(2)]

If all development rights have expired with respect to any real estate, the Declarant may within 30 days of such expiration, by recorded declaration, chose to remain liable for all such expenses of that real estate. [See C.R.S. 38-33.3-307(3)]

6. Surpluses of Association. Any surplus funds of the Association remaining after payment of or provision for common expenses and any prepayment of or provision for common expenses and any prepayment of or provision for reserves shall be credited to unit Owners to reduce their future common expense assessments. [See C.R.S. 38-33.3-314]

7. Common Expenses. The common expenses shall be allocated equally to each unit Owner, in accord with the formula described above at Section 4(k), except costs of water supply operation shall be assessed in proportion to usage (which may include block rates for levels of usage). [See C.R.S. 38-33.3-316(3)]

8. Association Has Lien. The Association has a statutory lien, pursuant to C.R.S. 38-33.3-316, on a unit for any assessment levied against that unit or fines imposed against its unit Owner. Fees, including water usage fees, charges, late charges, attorney fees, fines and interest are enforceable as assessments. A lien for assessments is prior to all other liens and encumbrances on a unit except as provided by statute. [See C.R.S. 38-33.3-316(2)(a)]

9. Unit Subdivision. No unit may be subdivided. (See C.R.S. 38-33.3-213)

10. Declaration Amendment. This Declaration may be amended or terminated by vote or agreement of unit Owners of units to which at least 75% of the votes of the association are allocated and in accordance with statute and the Articles and By-Laws of the Association. [See C.R.S. 38-33.3-217, 218]

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

Prior to the close of sale of the first unit, Declarant may amend this Declaration.

11. Addition by Declarant. Declarant, in addition to any other development right, may amend the Declaration at any time before 20 years have passed from the recording of this Declaration to add additional real estate to Southfork. [See C.R.S. 38-33.3-222]

12. Association Assignment of Income. The Association may not assign its right to future income, including the right to receive common expense assessment. [See C.R.S. 38-33.3-302(2)]

13. Life of Declaration. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date of recording, after which time said Declaration shall automatically be extended for successive periods of 10 years, unless an instrument signed by a majority of the then Owners of the units has been recorded agreeing to change said Declaration in whole or in part. In the event land covered by this Declaration is annexed by an incorporated city, all covenants shall become null and void.

14. Violation of Declaration. In the event of the violation of any of the restrictions or conditions or the breach of any of the covenants and agreements herein contained and the failure on the part of the violator for a period of 30 days after service by mail of a written notice of such breach, addressed to the Owner at his last known address, to commence and thereafter diligently proceed to remove or put an end to such conditions as are in violation of said restrictions or conditions, the Association then shall have the right to enter the unit upon or as to which such violation or breach exists and to summarily abate or remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, and the Association, shall not thereby be deemed liable of any manner or trespass for such entry, abatement or removal.

15. Architectural Control Committee.

a) An Architectural Control Committee of three persons is hereby created. Said committee shall exist and exercise the controls herein provided for

a period of 30 years from the date hereof. The Declarant shall initially appoint the three members and those members during the period of Declarant control.

b) Should any members of said committee die or become unable to serve on said committee or resign, a successor shall be appointed by the remaining member or members of said committee. The Architectural Control Committee has the right to waive any and all of the Land Use Standards when it deems such waiver in the best interests of Southfork.

c) The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Control Committee.

d) The Architectural Control Committee is created to promote conformity and harmony among structures within Southfork Subdivision as to external design, quality and type of construction, materials, color, location in relation to surrounding structures, height, topography, grade and finished ground elevation and all aesthetic considerations herein set forth. No structure shall be constructed or exist on Southfork, except on any portion of Southfork while owned by a county or other political subdivision of the State of Colorado, except in strict compliance with this Article and until the requirements thereof have been fully met and until the approval of the Architectural Control Committee has been obtained.

16. Enforcement. If any person subject to the provisions of C.R.S. 38-33.3-101, *et seq.*, fails to comply with any of its provisions or any provision of the Declaration, By-Laws, Articles or rules and regulations, any person or class of persons adversely affected by the failure to comply may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counterclaims, cross-claims and third-party claims, in any legal proceeding to enforce the provisions of the Declaration, By-Laws, Articles or rules and regulations, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim. [See C.R.S. 38-33.3-123]

17. Severability. All provisions in this Declaration and the Articles and By-Laws of the Association shall be construed together, but if it shall at any time be held that any such provision or part thereof is invalid, or if for any reason any such provision or part thereof, becomes unenforceable, no other provision or part thereof shall be affected or impaired.

18. Annexation of Additional Property. Subject to the consent of the Owner thereof, upon the written consent or affirmative vote of a majority of the members other than Declarant of the Association present in person or by proxy at a meeting duly called



for such purpose, and of Declarant until January 1, 2019, the Association may annex real property following the expiration of the Declarant's development rights and the jurisdiction of the Association by recording in the records of the Clerk and Recorder of El Paso County, Colorado, a Subsequent Amendment in respect to the property being annexed. Any such Subsequent Amendment shall be signed by the President and the Secretary of the Association, and the Owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein.

19. Acquisition of Additional Common Elements. Declarant may convey, or lease additional real estate, improved or unimproved, and personally, located within the property which upon conveyance, dedication or lease to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its members.

20. Rights of the Association. The Association shall have all powers granted by C.R.S. 38-33.3-302 and the Articles of the Association.

21. Assessments for Common Expenses.

a) Until the Association makes a common expense assessment, the Declarant shall pay all common expenses. After any assessment has been made by the Association, assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association. The maximum annual assessment shall be \$500 per unit. This maximum applies to all units (except commercial, church, school or governmental units, if any, for which there shall be no maximum). The assessment for water, based on usage, may exceed this maximum.

b) Except for assessments under Subsections (c) and (d) of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the Declaration pursuant to C.R.S. 38-33.3-207(1) and (2). Any past-due common expense assessment or installment thereof shall bear interest at the rate established by the Association not exceeding 21% per year.

c) If any common expense is caused by the misconduct of any unit Owner, the association may assess that expense exclusively against such Owner's unit.

d) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

e) Each unit Owner is liable for assessments made against such Owner's unit during the period of ownership of such unit. No unit Owner may be

exempt from liability for payment of the assessments by waiver or the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made. [See C.R.S. 38-33.3-315]

f) The costs assessed for water usage by unit Owners shall be assessed by the Bobcat Meadows Metropolitan District. Each unit will be monitored by a water meter to measure usage, and will establish and enforce regulations and fees relating to water usage. The Metropolitan District may also shut off water for non-payment of water usage charges.

g) Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such residential unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no First Mortgagee who obtains title to a Residential Unit pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Executive Board which may include, without limitation, acceleration of the annual assessment for Owners who are delinquent in payment of assessments as provided in this Article; unless the Board otherwise provides, the assessments shall be paid in monthly installments.

The Association is specifically authorized to enter into subsidy contracts with Declarant or other entities for the payment of some portion of the Common Expenses; provided, however, the Veterans Administration shall be advised of and approve any form of subsidy contract entered into between the Declarant and the Association.

h) Budget for Assessments. It shall be the duty of the Board, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund. The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each unit for the following year to be delivered to each Owner at least 15 days prior to the meeting. The budget and the assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the members of the Association.

Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

i) Special Assessments. In addition to the common expense assessment, the Association may levy a Special Assessment with the approval of 51% of the unit Owners (excluding the Declarant). The Association also may levy a Special Assessment against any member to reimburse the Association for costs incurred in bringing a member and his unit into compliance with the provisions of the Declaration the Amendments thereto, the Articles, the By-Laws and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing.

j) Date of Commencement of Annual Assessment. The annual assessment provided for herein shall commence as to all units on the first calendar day of the month following the conveyance of the first unit to an Owner other than Declarant. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months remaining in that fiscal year. The annual assessment for units annexed into Southfork shall commence on the first day of the month following the recording of the Amendment to the Declaration Incorporating the units into the Southfork, and shall be prorated according to the number of months remaining in the calendar year.

k) Annual Assessment Increase Without Vote. The annual assessment may increase without the vote of the membership of up to 5%, or in an amount equal to the rise in the United States Bureau of Labor Statistics Consumer Price Index for the area, all urban consumers. Annual assessments may be increased above these amounts with the approval of 51% of the lot Owners (excluding the developer).

22. Use Restrictions. The Association, acting through its Board of Directors, shall have the authority to make and to enforce standards and restrictions governing the use of units and the common elements, including the imposition of reasonable user fees. The association, acting through the Board of Directors, shall have standing and the power to enforce the Land Use Standards, and any future Land Use Standards for subsequent phases.

a) Each unit shall be used for one single-family dwelling. If desired, a barn and corral may be erected. All dwellings or other buildings must be placed a minimum of **(25) twenty-five<sup>1</sup>** feet from the property line.

b) All dwellings shall contain a minimum of (1040) one thousand forty square feet - 28' X 40' box size (no single wide units) and a minimum (400) four hundred square foot garage (20' X 20'). Used dwellings moved onto a Southfork unit must be approved by the Architectural Control Committee.

1) Property line setback incorrect in original document, corrected in 201110318 – see appendix A

- c) The exterior of all buildings shall be constructed of or finished with manufactured finished material, natural stone or brick and shall be painted or stained upon completion so that all exposed surfaces shall have a finished appearance. The garage and any barn shall conform with the color and appearance to the exterior of the dwelling. All roofs shall have a minimum 3 - 12 pitch.
- d) Any temporary structures or residences such as trailers, mobile home, camper, tent, shack, barn, car port, or garage must be reviewed and approved by the Architectural Control Committee.
- e) No unsightly finishes, reflective surfaces or unsightly exposed piping and wiring are permitted on any solar energy collecting panels or attendant hardware or other energy conservation equipment.
- f) Cooling systems shall be adequately walled, fenced or landscaped to prevent unreasonable noise and exposure.
- g) No signs, advertisements, billboards or advertising structure of any kind shall be displayed to the public view on any portion of a unit or building, or on any common element, except (i) a sign of not more than (6) six square feet advertising such unit for sale, or containing house numbers or occupants' names, (ii) a sign which is first approved by the Architectural Control Committee in writing. No signs shall be animated or flashing. Declarant and its assigns may erect signs for units which Declarant owns.
- h) All walls, fences, hedges or similar structures must be pre-approved by the Architectural Control Committee, in writing. No wall or fence shall be more than (6) six feet high.
- i) Lawns and gardens shall not exceed (4,000) four thousand square feet, in total, for each unit. Landscaping shall be maintained in a neat and attractive manner. Trees, shrubs and vines that die shall be promptly removed.
- j) All units shall be kept at all times in a sanitary, healthful, attractive and safe condition. Units shall not be used for storage of material or equipment. The accumulation of garbage, trash or rubbish of any kind, except for normal residential requirements or incident of construction of improvements thereon is prohibited. All yard equipment shall be stored properly and all storage piles (including wood) shall be maintained in a neat and attractive manner.
- k) No excavation shall be made except in connection with approved construction and landscape.

l) No well for the production of or from which there is produced water, oil or gas shall be dug nor storage tanks or reservoirs, nor any installation of power, telephone, or utility lines shall be made or operated anywhere on Southfork, except works operated by the Declarant, Bobcat Meadows Metropolitan District, Association, public agencies or duly certified public utility companies.

m) No more than (3) large animals of any kind shall be kept, raised or bred on any unit of Southfork, except dogs, cats or other household pets (the kind and number of which may be regulated, permitted or prohibited from time to time by the rules and regulations promulgated by the Board). Household pets, such as dogs and cats, must be contained upon owners' unit, and such pets may not be permitted to run at large and any time. Approved fencing or a fenced run may be required to assure that household pets do not stray from the unit. Pedestrians within Southfork Subdivision who are accompanied by dogs must have the dog under the pedestrian's direct control by use of a leash not to exceed 15 feet in length. Horses and livestock must be kept securely enclosed by a sufficient corral or fence (not barbed wire).

n) Any exterior radio, television, or other aerial, antenna, satellite dish, tower or other transmitting or receiving structure, or support thereof, shall be no more than 4 feet higher than the peak of the roof of the dwelling, and shall be located within 25 feet of the dwelling.

o) All exterior lighting fixtures shall be at least 60 feet from the property lines and approved by the Architectural Control Committee.

p) Except in the case of emergencies, no automotive repairs or maintenance may be conducted within or upon a unit in such a manner as to be visible from any point outside the unit. Abandoned or inoperable automobiles or vehicles of any kind shall not be stored or parked on any portion of Southfork Subdivision.

q) No motor vehicles and trailers of a type generally used in a trade or business or other commercial purpose including, without limitation, tractors, trucks, busses, and trailers and construction equipment shall be parked or stored on any public street, right-of-way or unit unless such vehicle can be enclosed within a closed approved garage or storage building. This does not include passenger cars, trucks or vans. Parking of commercial construction equipment is only allowed during construction.

r) Refuse shall be deposited in closed garbage cans or sealed garbage bags and taken to the edge of the street for scheduled collection not more than 12 hours before such collection is scheduled to occur. Emptied cans shall be removed from the edge of the street as soon as practicable following

such collection and kept in a suitable storage area. No unit or common area shall be used as a dumping ground for rubbish, trash, waste, materials or garbage. Outdoor open burning of trash or other matter is prohibited.

s) No noxious, obnoxious, illegal, dangerous or offensive activities that would be an annoyance or nuisance to the neighborhood shall be allowed on any unit. No commercial business or trade shall be permitted.

t) No building or other structure shall be constructed on any drainage easement. Surface waters may not be discharged onto a neighboring unit in a manner detrimental to that unit.

u) Utilities are the sole responsibility of the individual owner. All sanitary facilities shall have prior approval of the Health Department of El Paso County. Unit owners shall obtain water services from the Bobcat Meadows Metropolitan District.

23. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Executive Board) to which he or she may be a party by reason of being or having been an officer or director; however, such indemnification shall not be inconsistent with C.R.S. 38-33.3-303(2). The officers and Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

24. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each unit and such portion of the common elements, or property owned by the Association, adjacent thereto or as between adjacent units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary between each unit and the adjacent portion of the common element or property owned by the Association, or as between such adjacent units, as the case may be, along a line perpendicular to such boundary at such point;

provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

25. Easements for Utilities, Etc. There is hereby reserved the power to grant blanket easements upon, across, over and under all of Southfork for ingress, egress, installation, replacing, repairing and maintaining master television antenna systems, cable TV, security and similar systems, walkways and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity, and including utilities for common elements. The Board shall, upon written request, grant such easements as may be reasonably necessary for the development of any unit or common element.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on Southfork, except as may be approved by the Association's Executive Board or as provided in connection with the development and sale of Southfork by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Executive Board shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on Southfork.

26. Right of Entry. The Association shall have the right, but shall not be obligated, to enter upon any unit for emergency, security and safety, which right may be exercised by the Association's Executive Board, officers, agents, employees, managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include (and this right of entry shall include) the right of the Association to enter upon a unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

In addition to the foregoing, the Association shall enjoy such right of entry in order to take curative measures in the event of an Owner's failure to comply with this Declaration and the Articles, By-Laws and Rules of the Association.

27. Remedies. In addition to the remedies set forth above in Declaration, any violation of the Declaration, the Articles of Incorporation and By-Laws of the Association, and any rules, regulations or policies adopted by the Board, shall give the Board, the Manager or the Owners (including Declarant while Declarant is a unit Owner), the right to enter upon the offending unit or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner any structure

or condition that may exist thereon contrary to the interest and meaning of the Declaration, Articles, By-Laws, rules and decisions of the Architectural Control Committee.

28. Perpetuities. If any of the covenants, conditions, restriction or other provisions of this Declaration shall be unlawful, void or violable for violation of the rule against perpetuities, then such provisions shall be considered null and void.

29. Mortgagees' Rights. The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on units in Southfork Subdivision. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and By-Laws of the Association. These provisions apply only to "eligible holders", as hereinafter defined.

a) Notice of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the unit number), (therefore becoming an "eligible" holder), will be entitled to timely written notice of:

i) any proposed termination of the Association;

ii) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any unit on which there is a First Mortgage held, insurance or guaranteed by such eligible holder;

iii) any delinquency in the payment of assessments or charges owed by an Owner of a unit subject to the Mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of 60 days;

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

v) any proposed action which would require the consent of eligible holder, as required in Sections (a) and (b) of this Article.

b) Other Provisions for First Mortgagees. To the extent possible under Colorado law:

i) any restoration or repair of the Properties after a partial condemnation or damage due to an insurance hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible holders of First Mortgages on units to which at least 51% percent of the votes of units,



subject to Mortgages held by such eligible holders are allocated, is obtained;

ii) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation must require the approval of the eligible holders of First Mortgages on units to which at least 51% percent of the votes of units, subject to Mortgages held by such eligible holders, are allocated.

c) Amendments to Documents. The following provisions do not apply to amendments to the constituent documents, that is, the Declaration of Covenants, Conditions and Restriction, the By-Laws and the Articles of Incorporation, or termination of the Association made as a result of destruction, damage or condemnation pursuant to Section 2(i) and (ii) of this Article, or to the addition of land in accordance with this Declaration, a reallocation of interests in the common elements which might occur pursuant to any plan of expansion or phased development previously approved by the agencies and corporations, to the extent such approval was required under the applicable programs of the agencies and corporations, that is, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration and the Federal Housing Administration.

i) the consent of at least 67% of the unit Owners and of the Declarant so long as it owns any land subject to this Declaration and the approval of the eligible holders of First Mortgages on units to which at least 67% of the votes of units subject to a Mortgage appertain, shall be required to terminate the Association;

ii) the consent of at least 67% percent of the unit Owners and of the Declarant and the approval of eligible holders of First Mortgages on units to which at least 51% of the votes of units subject to a Mortgage appertain, shall be required to materially amend any provisions of this Declaration, By-Laws or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

a) voting;

b) assessments, assessment liens or subordination of such liens;

c) reserves for maintenance, repair and replacement of the common elements;

d) insurance or Fidelity Bonds;

- e) rights to use of the common elements;
- f) responsibility for maintenance and repair of Southfork;
- g) expansion or contraction of Southfork or the addition, annexation or withdrawal of property to or from the Association;
- h) boundaries of any unit;
- i) leasing of units;
- j) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or other wise convey his or her unit;
- k) establishment of self-management by the Association where professional management has been required by any of the agencies or corporations; or
- l) any provisions included in the Declaration, By-Laws or Articles of Incorporation which are for the express benefit of holders, guarantors or insurers of First Mortgages on units.

d) Special FHLMC Provision. So long as required by The Mortgage Corporation, the following provisions apply in addition to, and not in lieu of, the foregoing three Sections of this Article. Unless two-thirds of the First Mortgagees or Owners give their consent, the Association shall not:

- i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements which the Association owns, directly or indirectly;
- ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- iii) by act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design of the exterior appearance and maintenance of units and of the common elements;
- iv) fail to maintain fire and extended coverage insurance, as required by this Declaration; or

v) use hazard insurance proceeds for any common element losses for other than the repair, replacement or reconstruction of such property.

30. No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the common elements or any part thereof, nor shall any person accruing any interest in Southfork or any part thereof seek any such judicial partition or unless property been withdrawn from the provisions of the Declaration. This Article shall not be construed to prohibit the Executive Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

31. Insurance.

a) Commencing not later than the time of the first conveyance of a unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

i) property insurance on the common elements and also on property that must become common elements, for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies, and

ii) commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the common elements in an amount deemed sufficient in the judgment of the Executive Board, but not less than any amount specified in the Association documents, insuring the Executive Board, the Association, the management agent and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a unit owner and Board member. The unit Owners shall be included as additional insurers, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.

b) If the insurance described in Subsection (a) of this section is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, and Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The Declaration may require the

Association to carry any other insurance, and the Association in any event may carry any other insurance it considers appropriate, including insurance on units it is not obligated to insure, to protect the Association or the unit Owners.

c) Insurance policies carried pursuant to Subsection (a) of this section must provide that:

i) each unit owner is an insured person under the policy with respect to liability arising out of such unit Owner's interest in the common elements or membership in the Association;

ii) the insurer waives its rights to subrogation under the policy against any unit owner or member of his household;

iii) no act or omission by any unit owner, unless acting within the scope of such unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

iv) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

d) any loss covered by the property insurance policy described in Paragraph (i) of Subsection (a) of this section must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association unit owners and lienholders as their interest may appear. Subject to the provisions of Subsection (i) of this Section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common interest community is terminated.

e) the Association may adopt and establish written nondiscrimination policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent unit owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one unit is damaged by a loss, the Association in its reasonable discretion may assess each unit owner a *pro rata* share of any deductible paid by the Association.

f) an insurance policy issued to the Association does not obviate the need for unit owners to obtain insurance for their own benefit.

g) an insurer that has issued an insurance policy for the insurance described in Subsection (a) of this section shall issue certificates or memoranda of insurance to the Association and, upon request, to any unit Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, and each unit owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

h)

i) Any portion of Southfork for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

a) Southfork is terminated, in which case C.R.S. 38-33.3-218 applies;

b) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

c) 80% of the unit Owners, including every Owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild; or

d) prior to the conveyance of any unit to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the common interest community rightfully demands all or a substantial part of the insurance proceeds.

ii) the cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire Southfork is not repaired or replaced, the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the Southfork Subdivision, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the Owners of those units and the Owners of the units to which those limited common elements were allocated, or to lienholders, as their interest may appear, and the remainder of the proceeds must be distributed to all the unit Owners or

lienholders, as their interests may appear, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under C.R.S. 38-33 3-107 and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

i) If any unit Owner or employee of an Association controls or disburses funds of Southfork, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the Association.

j) Any person employed as an independent contractor by the Association for the purposes of managing Southfork must obtain and maintain fidelity insurance in an amount not less than the amount specified in Subsection (i) of this section, unless the Association names such person as an insured employee in a contract of fidelity insurance, pursuant to Subsection (i) of this section.

k) The Association may carry fidelity insurance in amounts greater than required in Subsection (i) of this section and may require any independent contractor employed for the purposes of managing Southfork to carry more fidelity insurance coverage than required in Subsection (i) of this section.

l) Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are common expenses. [See C.R.S. 38-33.3-313]

IN WITNESS WHEREOF, This instrument is executed this 27<sup>th</sup> day of April 1999.

SOUTHFORK DEVELOPMENT, LTD.

By: Holly Management, LLC, a Texas limited liability company

Its: General Partner

By: Robert D. Laughlin

Robert D. Laughlin

Area Manager

\* NOTE: The preceding document has been modified from the original version through the incorporation of properly executed amendments and additionally has had minor obvious errors of spelling, grammar and punctuation corrected. The notarization of the document has also been omitted for the sake of brevity. The document is intended to be as complete and accurate a representation of the currently in force covenants as possible, but should not be construed to be a replacement for the original legally binding documents.

## **APPENDIX A**

### **AMENDMENTS TO COVENANTS**

The following documents are the enacted covenant amendments currently in force. The notarization of the document has been omitted for the sake of brevity.

Two amendments have been filed with El Paso County to date:

201077061 : Modifies the association name referenced in the original covenants.

201110318 : Incorporates Southfork Subdivision Filing 2 into the covenants and modifies the minimum property line setback for structures.



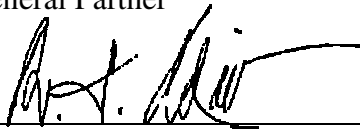
**AMENDMENT TO COVENANTS  
(Clerical Error)**


This Correction is made this 25<sup>th</sup> day of May 2001 by Southfork Development, Ltd, a Texas limited liability company, Declarant, to those certain Amended and Restated Restrictive Covenants recorded in El Paso County under Reception Number 099065773.

The reference in Section 3(a) to the "Southfork Property Owners' Association" should be to the **Southfork Homeowners' Association, Inc.**

SOUTHFORK DEVELOPMENT, LTD  
BY: Holly Management LLC, a Texas  
limited liability company

ITS: General Partner

BY:   
ITS: **ROBERT L. ADAIR III**  
**Authorized Signatory**

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**AMENDMENT TO COVENANTS  
(Addition of Real Property and Correction of Clerical Error)**

Pursuant to Section 11 of those Amended and Restated Restrictive Covenants (recorded April 27, 1999, at reception number 099065773), the undersigned, Southfork Development, Ltd, a Texas limited liability company, Declarant, hereby amends said Covenants by the addition of that real property identified as Southfork Subdivision Filing No. 2 according to the plat recorded under reception No. 10947 in the records of El Paso County, Colorado. Henceforth, said Southfork Subdivision Filing No. 2 shall be subject to the Amended and Restated Restrictive Covenants.

In addition, due to a clerical error, the setback requirement in Section 22(a) of said Amended and Restated Restrictive Covenants should read "25 feet" instead of "75 feet" in order to conform to County subdivision requirements.

SOUTHFORK DEVELOPMENT, LTD  
BY: Holly Management LLC, a Texas  
limited liability company

ITS: General Partner

BY: *Robert D. Laughlin*  
Robert D. Laughlin, Area Manager

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