

Dues under \$400 per year

**DECLARATION OF PROTECTIVE COVENANTS
MONARCH RIVER ESTATES I, II, III HOME OWNERS ASSOCIATION, INC.
A Colorado Non-Profit Corporation**

THIS DECLARATION OF PROTECTIVE COVENANTS is made this 7th day of December, 2007 by Vincent A. Tucker, Kathryn A. Tucker, Lornie Lowry, and Fred Lowry, hereinafter referred to as "Declarants".

Article I - PREAMBLE

1. **Declaration.** The Declarants are owners of Monarch River Estates I, II, III ("Subdivision" or "Monarch River Estates") and Monarch River Estates I, II, III Home Owners Association, Inc., a Colorado Non-profit Association, (hereinafter the "Association"). Declarants hereby declare that these Protective Covenants shall be placed upon it in order that said property be maintained and kept as a carefully protected environment and residential community, and in order that the natural beauty of the land be retained to the end that the health, safety, welfare and property values of all owners of the property be promoted, safeguarded and maintained.
2. **Property.** Declarants are the owners of real property situated in Chaffee County, Colorado, hereinafter referred to as the Property, and legally described in Exhibit A, attached hereto, and on the plat of Monarch River Estates I, II, And III (a subdivision) recorded in the records of Chaffee County, Colorado.

Article II - DEFINITIONS

1. **Residential Lots.** All lots in said subdivision shall be known and described as "residential lots" or "lots" and will be restricted by all the Covenants contained herein.
2. **Common Roads.** Monarch Estates Drive, Puma Path, and Monarch River Drive are roads owned in common by the members of the Association. The Roads are to be located as shown on Exhibit A. These roads, when constructed will be deeded to the Association by the Declarants. All other roads and driveways will be constructed and maintained by their owners.
3. **Owner.** An "owner" shall mean any record owner, whether one or more persons or entities, of a fee simple title interest to any one or more lots in Monarch River Estates.
4. **Association.** The "Association" shall mean the Monarch River Estates I, II, III Home Owners Association, a Colorado corporation not for profit, organized and managed in accordance with these Covenants, the Articles of Incorporation and Bylaws of said Association, as the same may be duly amended from time to time.
5. **Board.** The "Board" shall mean the Board of Directors of the Association.

6. **Improvements.** "Improvements" shall include, but not be limited to, any structures such as dwelling houses, storage sheds, barns or stables, kennels, arenas, swimming pools, tennis courts, ponds, poles, antennas, wind generators, solar collectors, outdoor lights, fences, walls, garages and drives. All improvements shall conform to Chaffee County standards.

Article III - MONARCH RIVER ESTATES I, II, III HOME OWNERS ASSOCIATION

1. **Purpose.** The purpose of the Association is to carry out the purposes, powers, duties and responsibilities assigned to it by these Covenants, the Articles and Bylaws, and, to take such other acts or actions as may be necessary to maintain and protect the common area and any other property owned by or under the care and control of the Association.

2. **Membership, Voting.** All owners of lots in Monarch River Estates shall automatically become members of the Association. Membership shall automatically pass with fee simple title to each of said lots. There shall be one vote per lot. Only those members whose dues are paid shall be eligible to vote, serve on the Board or any committee or participate in the affairs and functions of the Association.

3. **Board of Directors.** The affairs of the Association shall be managed by the Board of Directors in accordance with these Covenants, the Articles and Bylaws. The Board shall have three to five members. The Board shall be composed of members elected by the members. The members of the Board and any committee shall serve without compensation.

4. **Dues.** The Board shall have the right to determine initial annual dues for membership in the Association. The dues for all lots with residences shall be equal for each such lot. Annual dues shall be calculated once each year and shall include amounts necessary for the Association to maintain the Common Roads and Other Roads. The annual dues may be increased only by a majority vote of the members attending any annual meeting in person or by proxy, in which a quorum is present, as long as prior written notice of the proposed dues increase is given to the members in the notice of the meeting as prescribed in the Bylaws.

5. **Period of Declarant Control.** Declarants and any successor of a Declarant, who takes title to all or part of the Subdivision for the purpose of development and sale of the Subdivision and who is designated as Successor Declarant in a recorded instrument executed by a Declarant, shall have exclusive power to appoint and remove members of the Board to the fullest extent permitted by C.R.S. § 38-33.3-303 of the Colorado Revised Statutes. This period of Declarant control shall terminate no later than the earlier of:

A. 60 days after conveyance of 10 of the lots that may be created to Lot Owners other than a Declarant; or

B. two years after the last conveyance of a Lot by a Declarant in the ordinary course of business; or

C. Declarants may voluntarily surrender the right to appoint and remove Members of the Board before termination of the period described above. In that event, the Declarants may

require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument, executed by the Declarants, be approved by the Declarants before they become effective.

D. Not later than 60 days after conveyance of 25 percent of the Lots that may be created to Lot Owners other than a Declarants, at least one Member and not less than 25 percent of the Members of the Board shall be elected by Lot Owners other than the Declarants. Not later than 60 days after conveyance of 50 percent of the Lots that may be created to Lot Owners other than a Declarants, not less than 33-1/3 percent of the Members of the Board must be elected by Lot Owners other than the Declarants.

E. Not later than the termination of any period of Declarant control, the Lot Owners shall elect an Board of at least three Members, at least a majority of whom shall be Lot Owners. The Board shall elect the officers. The Board Members and officers shall take office upon election.

F. Notwithstanding any provision of this Declaration or the bylaws to the contrary, following notice under C.R.S. § 38-33.3-308, the Lot Owners, by a vote of 67 percent of all Lot Owners present and entitled to vote at a meeting of the Lot Owners at which a quorum is present, may remove a Member of the Board with or without cause, other than a member appointed by the Declarants.

Article IV - Covenant Committees.

1. **Control.** The Board shall have and exercise all the powers, duties and responsibilities set forth in these Covenants. Wherever, in these Covenants, the words "Board or Committee" appear, the Board may delegate such duties and responsibilities to one or more covenant committee(s) of not less than three (3) owners. No suit for enforcement of these Covenants shall be brought until approval by a two-thirds (2/3) vote of the Board present at any regular or special meeting of the Board in which a quorum is present.

2. **Members Not Liable.** In connection with their duties on behalf of the Association, neither the members of the Board nor the members of any committee shall be liable in damages to any owner or other person or entity by reason of any action, failure to act, approval, disapproval or enforcement of these Covenants or plans submitted hereunder. The Association further agrees to indemnify and hold harmless (including attorneys fees and costs) the Board and those members serving on its Committees in the event any suit or action is instituted relative to the Association. The Board shall obtain and maintain liability insurance sufficient to protect the Association and its members.

3. **Approval of Plans.** The Board or members of an appropriate appointed committee shall have authority to enforce these covenants. No improvement shall be constructed, altered in exterior appearance, enlarged or placed on any lot, unless adequate plans and specifications and a plot plan are approved in writing by a majority vote of those members present and voting of the Board or Committee. The Board or Committee shall approve or disapprove the plans within

thirty (30) days after they are submitted to it. Plans may be approved or disapproved in part or approved with reasonable conditions or amendments. In reviewing any plans for proposed improvements, the Board or Committee shall take into consideration the suitability of the proposed improvement together with the materials, landscaping, topography of the land, grading, harmony of the proposed improvement with the surroundings and the effect of the improvement on adjacent or neighboring lots. The Board or Committee shall protect the seclusion of each home from others insofar as practical. In the event a decision is not rendered within said thirty (30) day period, the plan shall be deemed approved. If a committee rejects all or part of the plans, such failure or disapproval may be appealed to the Board by the owner in the same manner as a variance, except that the standards set forth in this paragraph shall be applied by the Board. Owners and their consultants are encouraged to present preliminary plans to the Board or Committee for an internal review. The Board may impose a reasonable fee, depending upon the nature and extent of the proposed improvement for review of such plans or for a request for a variance. The following are current design guidelines for **Monarch River Estates** which may be updated by the Board from time to time:

- A. **Buildings.** None of the lots shall be used for other than one private single family dwelling together with a private garage and/or guest house and suitable barn or shed, and any other improvements approved by the Board. All structures on the site must be aesthetically compatible with the principal dwelling. All lots shall have at least a two car enclosed garage. No lot shall contain more than three (3) outbuildings.
- B. **Building Colors.** Any buildings, whether principal dwelling structure or outbuilding shall be earth tone in color, both on the exterior walls of the building as well as the roof.
- C. **Temporary Structures.** No structure of a temporary character shall be used on any lot as a dwelling including RV's, campers, yurts, tipis, and tents. No dwelling shall be occupied until the exterior construction is substantially completed and a certificate of occupancy has been issued.
- D. **Size of Dwellings.** The principal dwelling shall have a minimum enclosed living area, exclusive of garages and unfinished basements, of 2000 square feet. Where a guest house is allowed by county, the guest house shall have a minimum enclosed living area of 800 square feet.
- E. **Residential Use of Lots.** Lots and improvements thereon may only be used for residential purposes, except that the Declarants may conduct sales and construction activities. Subject to Board approval on an annual basis, residential purposes may include home occupations, so long as the activity does not: create excessive vehicular traffic to and from such Lot; employ persons for home occupation purposes at such Lot other than those residing on such Lot; require storage of significant materials, machinery, inventory or other items at such Lot; require processing of materials and the finish of products or assembly of parts produced off-site; require additional parking at such Lot, whether for customers, delivery or otherwise; or otherwise violate any provision of this Declaration or violate any County regulation governing home occupations. There shall be no exterior signage or advertising on the Lots in conjunction with any use of the Lot.

F. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Lot, except for dogs, cats or other household pets (the kind and number of which may be regulated as permitted from time to time by the Monarch River Estates Association Rules). No pet shall be allowed off its premises except under the strict control of its owner. All animals shall be kept and maintained in a clean and sanitary manner which does not create a nuisance.

G. **Driveways.** No dirt driveways shall be allowed. All driveways shall be constructed of gravel, road base, or a more permanent material.

H. **Construction Guidelines.** All construction shall conform to Chaffee County Building regulations. No manufactured housing shall be permitted on any parcel.

I. **Fences.** Fences shall be limited to within the borders of the building envelope. Fences shall in no way extend to the borders of the lot and shall be in conformance with the restrictions on the Plat. Materials and design of fences shall be approved by the Board or committee.

4. **Variances.** Where circumstances, such as topography, location of trees, vegetation, or other physical interference requires, or for any other reason in the sole and complete discretion of the Board, the Board may, by two-thirds (2/3) vote of the members present and voting at any regular or special meeting in which a quorum is present, allow reasonable variances to these Covenants upon terms and conditions it shall require. If an owner files a request for a variance or an appeal as provided in Paragraph 3 above, the Board shall set a hearing date to be held within thirty (30) days after receipt of a request for a variance or appeal. The Board shall give at least ten (10) days' prior notice of such hearing by first-class mail to all members of the Board and owners of all lots in Monarch River Estates. The decision of the Board shall be rendered in writing within ten (10) days after such hearing, and it shall be final subject to any legal or equitable rights an owner may have. All interested parties may present such evidence as may be reasonable and practicable at such hearing in accordance with such other rules and procedures as the Board may prescribe.

5. **Construction Time.** All principal dwellings must be completed, defined as having been issued a Certificate of Occupancy by Chaffee County, within 18 months of the issuance of the building permit by the County.

Article V - GENERAL RESTRICTIONS ON ALL LOTS

1. **Zoning Regulations.** The zoning regulations of Chaffee County, Colorado, as amended from time to time, shall apply to all lots. In the event of a conflict between the zoning regulations and these Covenants, the more restrictive provision(s) shall control.
2. **Garden.** A family vegetable and/or flower garden is permissible, not to exceed one-half acre in size. The garden shall be maintained so as to not create a nuisance. If the garden is abandoned, it shall be replanted to native grasses.
3. **Trash.** No portion of a lot shall be used or maintained as a dumping ground for rubbish. Trash, manure, garbage or other waste shall be kept and disposed of in a timely and sanitary manner, so as not to create a nuisance. All containers for the storage or disposal of such material shall be bear proof and shall be kept in a clean and sanitary condition and hidden from public view, except as necessary for removal.
4. **Hunting and Trapping.** No hunting or trapping shall be permitted, with exception for removal of animal nuisance with approval of board.
5. **Mailboxes.** Mailboxes are to conform to a uniform design as approved by the U.S. Postal Service.
6. **Prohibition of Unsightly Items.** No lumber, metal, junk vehicles, bulk materials, scrap, refuse or trash shall be kept stored or accumulated on any lot, except for firewood and except for building materials during the course of construction and then only for such reasonable time as is necessary to facilitate construction. Propane tanks shall be buried or shall be entirely screened from view by any other lot or road.
7. **Mineral Activity.** No oil or gas drilling, operations, quarrying or mining shall be permitted upon or under any lot.
8. **Utility Easements.** Easements and rights-of-way as shown on recorded plats for **Monarch River Estates** are hereby reserved for poles, wires, pipes, and conduits for heating, lighting, electricity, gas telephones, sewer, water or any other public or quasi public utility service purposes, together with the right of ingress and egress at any time for the purpose of further construction and repair.
9. **Off-Street Parking.** Each dwelling shall be constructed with an adequate off-street parking area for at least two automobiles per residence. Licensed vehicles only will be permitted to be parked outside on lots, no vehicles may be parked in open space. No more than two vehicles are allowed to be parked outside on a regular basis. The short term parking (less than 14 days) of recreational or utility vehicles on any lot must be done in an inconspicuous manner when viewed from public roads and neighboring properties. The long term parking (more than 14 days) of recreational or utility vehicles shall be housed only in an enclosed structure approved by the Board or committee.

10. **Nuisances.** No noxious things or activities shall be permitted on any lot which is a nuisance or disturbs the peace. A nuisance shall include excessive noise, excessive traffic, foul odors, noxious weeds, excessive light pollution, and other fire, health and welfare hazards.

11. **Resubdivision.** No lots shall be resubdivided into smaller tracts.

12. **Maintenance by Owner.** All lots and all improvements on lots, including fences, shall be maintained in good order, appearance and condition by the owner and so as not to create a nuisance. All owners of lots shall be responsible for the maintenance of their own private driveways.

Article VI – MAINTENANCE

1. **Maintenance of Roads.** The Association shall maintain all common roads. Such maintenance shall include snow removal as required.

2. **Maintenance of Fire Suppression System.** The Association shall have all rights to maintain the fire suppression cistern or other fire suppression system.

Article VII – ENFORCEMENT

1. **Violation Deemed a Nuisance.** Every violation of this Declaration for Monarch River Estates, the Articles and Bylaws of the Association, or any Rules and Regulations adopted by the Association shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

2. **Failure to Comply.** The failure to comply with this Declaration, or any Rules and Regulations adopted by the Board of Directors or committee shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them under the following terms and conditions:

A. Written notice of any violation or failure to comply with this Declaration for Monarch River Estates, the Articles and Bylaws of the Association, or any Rules and Regulations adopted by the Association or committee shall first be given to any Owner or person to such violation or failure to comply.

B. Such Owner or person shall be given ten (10) days from the date of such notice to correct such violation or failure to comply.

C. In the event that any Owner or person believes that he or she is not in violation or failure to comply, he or she may request an opportunity for a hearing by the Board prior to the Association taking further action or commencing any legal proceeding against such Owner or person.

D. Any action by the Association as against such Owner or person shall be by resolution of the Board following notice as provided for above and granting such Owner or person an opportunity to be heard by the Board.

3. **Who may enforce.** Any action to enforce any violation of any provision of this Declaration may be brought by the Association in the name of the Association and on behalf of the Association or by the Owner of any Lot.

4. **No Waiver.** The failure of the Board, the Association or any Owner to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

5. **Attorney's Fees.** If any legal action is commenced or maintained in court as to the interpretation, enforcement, construction or determination of the rights and duties of the parties to this Declaration for Monarch River Estates or any provision of the Association Documents provided herein, the prevailing party in any such actions shall be entitled to reasonable attorney's fees together with reasonable costs and expenses incurred in such action.

Article VIII - GENERAL PROVISIONS

1. **Severability.** Should any section or Covenant set forth in these Covenants be declared invalid or unenforceable by any court or competent jurisdiction, such decision shall not affect the validity of the remaining Covenants.

2. **Binding Effect.** These Covenants when effective shall run with the land and be binding upon and inure to the benefit of all owners of lots in Monarch River Estates, their successors and assigns.

3. **Duration.** The Covenants shall be in effect until March 1, 2020, and for five (5) successive periods of ten (10) years each thereafter unless sooner amended in whole or in part as provided below.

4. **Amendment.** These Covenants may be amended at any time, in whole or in part by an instrument in writing signed by the owners of a majority of the lots in Monarch River Estates.

5. **Effective Date.** These Covenants shall become effective for any and all lots only at such time as these Covenants containing the signatures of all the Declarants are recorded with the Clerk and Recorder of Chaffee County, Colorado.

IN WITNESS WHEREOF the Declarants have caused this Declaration to be executed as of the date set forth above.

