

**AGREEMENT**

**REGARDING**

**RED ROCK POINT PHASE 3**

This Agreement is entered into between Garden of the Gods Club LLC (GOTGC) and Kissing Camels Property Owners Association (KCPOA), regarding Red Rock Point Phase 3 (RRP-3), a planned development by GOTGC within Kissing Camels Estates (KCE). This Agreement shall be legally binding upon the parties and their successors and assigns, and shall be effective as of July 1, 2009. The parties agree as follows:

1. **Formation of Sub-Association.** Prior to recordation of plats for RRP-3, GOTGC will create the Red Rock Point Property Owners Association (RRPPOA), in accordance with Colorado Law, including CCIOA. RRPPOA shall be comprised of the property and the residents in the developments known as Red Rock Point Phase 1, Red Rock Point Phase 2, and Red Rock Point Phase 3. Red Rock Point Phase 4, if approved, will be the subject of an additional separate Agreement. The following characteristics and details shall apply to RRPPOA:
  - a. RRPPOA's formative documents shall make it subject to the KCPOA's Amended and Restated Declaration (Master Declaration) recorded on February 26, 2004, and shall make its residents members of KCPOA for all purposes. KCPOA shall be allowed to review and pre-approve the formative documents for RRPPOA, including its requirements for a Reserve Fund. RRPPOA shall be annexed into KCPOA by mutual agreement. Additionally, RRPPOA's formative documents will be designed to easily integrate RRP Phase 4 upon mutual agreement and approval by both parties. Such approvals above will not be unreasonably withheld.
  - b. RRPPOA residents will pay the same KCPOA dues per unit as all other KCPOA members, including other sub-associations such as The Park, Camels Ridge, etc., and shall pay such dues at the same time as other members.

- c. RRPOA residents shall maintain their own infrastructure (including streets) and shall pay into their own Reserve Fund for those purposes. Reserve Fund requirements shall be determined by reference to a reserve fund study prepared by a reputable national firm to be mutually agreed upon. Within 5 years after completion of construction (or longer if determined by KCPOA), the RRPOA infrastructure and its Reserve Fund will be folded into and fully integrated with that of KCPOA. Such integration shall be conditioned upon KCPOA approval following its inspection and review of the condition of the streets and other infrastructure and the status of the RRPOA Reserve Fund.
  - d. Unless otherwise agreed by KCPOA and RRPOA, RRPOA shall continue to exist as a separate entity similar to The Park and The Courtyard (and shall have full voting privileges) even following any integration of streets, infrastructure and Reserve Fund.
  - e. RRPOA shall not have its own ACC. Instead, the KCPOA ACC shall have the same jurisdiction and authority for RRPOA homes and ACC issues as it does for the current homes within KCE that are subject to the KCPOA ACC.
  - f. Appendix B, attached hereto, will become an official attachment to the KCPOA Design Guidelines.
  - g. Any house plans and landscape standards that are approved by KCPOA ACC for Red Rock Point Phase 1 are also approved for Red Rock Point Phase 3, with any exceptions and/or details as set forth in Appendix B, which describes ACC-related matters.
  - h. The parties agree to cooperate in good faith, and to execute those documents and take those necessary legal actions that are required to effectuate the formation of RRPOA and integrating RRPOA and its residents as full members of KCPOA.
2. **Contribution to KCPOA Reserve Fund.** GOTGC shall contribute \$2,000 to the Reserve Fund for each recorded, platted lot within Red Rock Point Phase 3 (18 planned lots at \$2,000 each for planned total of \$36,000), payable when the plat is recorded. After final plat recordation and said contribution, GOTGC agrees to make quarterly payment of dues for RRP-3 lots. Such payments shall be at the

customary dues amount for “unimproved” lots (currently \$68.00 per month), and shall continue for each lot within RRP-3 until a home is constructed on such lot and KCPOA begins collecting dues from a new homeowner on that “improved” lot. The payment of dues by GOTGC for “unimproved” lots to the KCPOA will be deposited into the KCPOA Reserve Fund.

3. **Other Fees and Conditions.**

- a. GOTGC agrees to pay an “ACC application fee” of \$600 per new unit to KCPOA, to be paid upon submission of application for a building permit for each new unit. Although the ACC has (per Section 6 of the RRP-1 Agreement) granted preliminary approval of home design and other structural and landscaping details (as described later in this Agreement and/or in Appendix B hereto), this fee will compensate KCPOA for additional ACC review and oversight prior to, during and following the construction process. As a method of notification, GOTGC agrees to timely provide to the KCPOA ACC a copy of each plot plan.
- b. In addition to the ACC application fee above, GOTGC also agrees to pay to KCPOA an impact fee of \$2,500 for each unit. Impact fees collected are intended to cover the degrading impact on KCPOA roads and infrastructure of the large volume of heavy construction traffic related to RRP-3 construction of approximately 18 homes. The impact fee shall be paid to KCPOA upon GOTGC’s submission of its application for a building permit for each new home within the RRP-3 project development. Impact fees collected shall be deposited directly into the Reserve Fund.

4. **Warranty Assurance Bond.**

- a. GOTGC hereby agrees to complete construction of streets and all infrastructure within RRP-3 in full compliance with City of Colorado Springs standards and specifications, and, to provide KCPOA and RRPPOA with a standard two-year construction warranty on such streets and infrastructure. In addition, prior to

commencing construction within RRP-3, GOTGC shall provide KCPOA with a Warranty Assurance Bond (WAB) and other assurances that mirror the requirements mandated by the City of Colorado Springs for commercial or public projects of this nature, or, in lieu thereof, provide other assurances to KCPOA that are mutually agreeable to the parties. At the end of the two-year warranty period, final acceptance by KCPOA will be based upon an inspection and repair as needed to satisfy the warranty, and the WAB will then be released.

5. **Construction Access and Gate.** Prior to commencement of home construction activities for RRP-3, builder and subcontractors shall obtain construction passes from Security Officers and follow established gate entry protocol, as would be expected of any other builder in KCE. Construction access will be the main gate.
6. **KCPOA ACC Review/Approval.** Preliminary ACC review, discussion, and approval of the 36 home plans (9 separate house plans, with 4 elevations of each) to be built in RRP-1 by GOTGC has occurred per the prior RRP-1 Agreement in accordance with the processes outlined in the KCPOA Design Guidelines. The ACC shall insure that RRP-3 proposed construction, including landscaping, conforms to those preliminary approvals, along with any other unique design, structural, landscaping or other features as set forth in Appendix B hereto.
7. **Construction Rules and Standards.** During construction of RRP-3, GOTGC shall comply with those standards of cleanliness and maintenance of the construction sites, and other rules regarding construction activities, that are required by the KCPOA Design Guidelines and policies as required of other builders/developers/homeowners within KCE.
8. **Disputes.** In the event either party, or its successors or assigns, should allege a breach of this Agreement by the other party, or, if either party or its successors or assigns should fail to agree on compliance with or implementation or interpretation of any part of this Agreement, such alleged breach or failure to agree shall be treated as a Dispute and handled pursuant to this clause. The parties agree not

to initiate litigation unless and until the steps outlined below have been exhausted without resolution of the dispute. The party alleging breach or failure to agree shall activate this Disputes clause by providing a written Notice of Dispute to the other party. Within seven (7) days of the delivery of such Notice, the parties shall hold discussions at the senior management level in a good faith attempt to resolve the dispute. If the dispute remains unresolved twenty (20) days following the delivery of such Notice, the parties shall participate in mediation, using a mediator that is acceptable to both sides. In the event the parties cannot agree upon a mediator, the mediator shall be designated by the President of the Council of Neighbors and Organizations (CONO) in Colorado Springs, but, in any event, within sixty (60) days following the delivery of the Notice of Dispute. Mediation shall commence upon a date mutually agreed by the parties, or if no agreement, then a date selected by the President of CONO. Mediation shall be deemed to have failed if so declared by the mediator, or, if the dispute is not resolved within thirty (30) days of commencing mediation. In lieu of mediation, the parties may mutually agree to another form of alternate disputes resolution (ADR), including binding arbitration, using a mutually agreed arbitrator, or if no agreement, then the arbitrator shall be designated by the President of CONO. If legal issues are involved in the dispute, the Law of the State of Colorado shall be the applicable law used to interpret or implement this Agreement. Should any dispute remain unresolved for any reason within one hundred twenty (120) days following the delivery of the Notice of Dispute, either party shall, thereafter, be free to pursue any remedies available at law or in equity.

9. **Other Developments by GOTGC Within KCE.** This Agreement is a stand-alone agreement for RRP-3 only, and constitutes KCPOA endorsement and support only for RRP-3. Upon the execution of this Agreement, KCPOA agrees to support the RRP-3 filing by GOTGC with the City of Colorado Springs authorities. However, the parties agree to cooperate in good faith to reach agreement for approval of home construction in Red Rock Point Phase 4 and other development parcels within Kissing Camels Estates.

10. **Miscellaneous:**

- a. **Partial Invalidity.** If in any instance any provision of this Agreement shall be held invalid or unenforceable under any applicable law it shall be replaced by an enforceable provision to the same or the nearest possible equivalent effect. In the event there is no enforceable provision to the equivalent effect, such provision shall not apply in such instance. In such event, the remaining provisions shall be given effect in accordance with their terms.
- b. **Entire Agreement/Modification.** This Agreement constitutes the entire agreement between the parties thereto and supersedes all prior oral and written agreements, communications and negotiations between the parties with respect to the subject matter hereof. This Agreement shall not be revised or modified except by written agreement executed by both parties hereto.
- c. **Time is of the Essence.** Time is of the essence with respect to each and every covenant, term and condition provided herein.
- d. **Duplicate Originals.** The parties agree that this Agreement shall be executed in duplicate originals.

Executed by:

**GOTGC**

**KCPOA**

By: *Tom Bordo*  
Title: President  
Date: 7/14/09

By: *C. Anderson*  
Title: President, KCPOA  
Date: 7/14/09

**ATTACHMENTS:**

**Appendix B**

**Appendix B For Garden of the Gods Club LLC ("GGC")  
Development Parcels Annexed into KCPOA**

**Conditions and Approvals Applicable to All Development Plans**

1. "Lot Line" shall mean the same as defined in the zoning regulations of the City of Colorado Springs and approved as part of the PUD and development plans for particular area.
2. "Setbacks" for respective lots within the filing are defined by the PUD approved, or as shown on the approved development plan.
3. "Minimum Square Footage" shall mean with respect to a dwelling, the square footage of all levels of living space, including the main, upper and basement levels, but shall not include garages. Minimum shall be approximately 2,800 square feet. If home does not include a basement, then minimum shall be 1,650 square feet.
4. "Maximum Height" shall not exceed the height restrictions imposed by the City as part of any approval. Any other specific exceptions agreed upon shall comply with the details of the approved development plan and plat.
5. Mailbox locations shall be as noted on plat.
6. Architectural Control Committee: The KCPOA ACC has reviewed the thirty six model house plans (nine separate house plans with four elevation variations for each plan) submitted by Sunrise for construction in RRPI, RRPII, Lakeview and other development parcels within Kissing Camels Estates. The nine plans submitted are identified as Models 501, 502, 503, 601, 602, 603, 801, 802 and 803. The following has been submitted and approved:
  - a. Two identical disks dated April 16, 2009, with the following information:



- i. GGC Architectural Renderings Binder Rev 12-09-08. This contains the thirty six house plans and color palette samples.
- ii. GGC Roof Shingle Samples for ACC
- iii. Roof Tile Samples for ACC
- iv. Elevations of the thirty six house plans. The elevations are on 11x17 drawings and are identified as follows:
  1. Plan 501 Twelve sheets issued as Delta 1 dated 8-25-08
  2. Plan 502 Twelve sheets issued as Delta 1 dated 8-25-08
  3. Plan 503 Twelve sheets issued as Delta 1 dated 8-25-08
  4. Plan 601 Eight sheets, four issued as CD dated 9-30-08 and four issued as Delta 1 dated 10-28-08
  5. Plan 602 Eight sheets, four issued as CD dated 9-30-08 and four issued as Delta 1 dated 10-28-08
  6. Plan 603 Eight sheets, six issued as CD dated 9-30-08 and two issued as Delta 1 dated 10-28-08
  7. Plan 801 Twelve sheets issued as Construction Set dated 12-17-08
  8. Plan 802 Twelve sheets issued as Construction Set dated 12-17-08
  9. Plan 803 Twelve sheets issued as Construction Set dated 12-17-08
- b. The builder agrees that any new house plans or material changes to exterior elevations will be submitted to the ACC for review and ACC agrees to work in a timely manner to address these requests.
- c. Application and impact fees may be different than required in other areas of Kissing Camels Estates as agreed upon by the KCPOA.
- d. Plot plans will be provided to the ACC within 5 days of applying for building permit.

**7. Landscaping:**

- a. Landscape Standards and Landscape Typical have been reviewed and approved by the ACC of the KCPOA. A CD of those items has been provided. It is understood that the standards document is a living document and will be updated occasionally and the ACC will be given this information for review and approval. No individual landscape designs will be provided if GGC LLC is doing all landscaping on a lot.
- b. For any homes that are sold by GGC LLC where GGC LLC does not provide all of the landscaping, Homebuyers will be required to meet the standards set forth in the Landscape Standards. Homebuyers will be required to submit landscape plans for all landscaping installed by the homebuyer to the ACC for review in accordance with the KCPOA Design Guidelines and pay any associated fees.

## **Additional Standards or Exceptions for Red Rock Point Filing No. 1**

1. Hill Circle Interface – Landscape Plans & Elevations. Lots 1-4 in RRP-I shall not have walk-outs. Lots 5 – 22 shall be restricted to a patio and one integrated deck, any rear elevation deck stair options on these lots shall be considered a variance and will require ACC approval. Furthermore; any two-story house with a walkout (3 story façade) backing to Hill Circle will be required to have a covered rear deck. Any owner desiring to not cover the rear deck can seek a variance from the ACC.
2. GGC shall include an allowance for front-yard landscaping in the price for all homes within RRP-I, and, shall also include an allowance for back-yard landscaping in the price for homes on Lots 1 through 21 and Lots 76 through 79. Purchasers of all lots shall be required to complete such landscaping within 180 days of completion of home construction.
3. All driveways shall be concrete.

## **Additional Standards or Exceptions for Red Rock Point Phase 2**

1. The rear elevation of all walkouts will be limited to one deck.
2. All rear elevation deck stair options shall be considered a variance and will require ACC approval.
3. Finished first floor elevation shall not exceed 5' above the centerline of the eastern section of Hill Circle. Any variance in excess will need to gain approval of the ACC.
4. Landscaping:
  - a. Common area landscape buffers will be maintained by RRPOA.
  - b. Front, side and rear landscaping installation will be included with the home purchase.
  - c. There will be 12 conifers (½ to be 6-8' and ½ to be approximately 12' in height) in buffer between driveway and Hill Circle.
  - d. There shall be a continuous sidewalk with appropriate landscaping on the east side of Hill Circle between RRP1 and RRP2 development areas.

### **Additional Standards or Exceptions for Red Rock Point Phase 3**

1. The pedestrian gate with access to Coronado High School was removed as agreed upon, but it is understood that the City of Colorado Springs may in fact require it in the approval process. Should the City of Colorado Springs reject removal of said gate, both parties agree that the KCPOA will be responsible for the management and maintenance of the gate.
2. Landscaping:
  - a. Lakeview will become part of RRPPOA and common area landscape buffers will be maintained by RRPPOA.
  - b. The landscape buffer along Hillbrook and Hill Circle will be complete prior to the certificate of occupancy for the first home.