

# **AGREEMENT**

## **REGARDING**

### **RED ROCK POINT PHASE I**

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 I (RRP-I), 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 September 22, 2008. The parties agree as follows:

1. **Formation of Sub-Association.** Prior to recordation of plats for RRP-I, GOTGC will create the Red Rock Point Property Owners Association (RRPPOA), in accordance with Colorado Law, including CCIOA, and the following characteristics and details shall apply:
  - 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 Phases II and III 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. RRPPOA 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 RRPPOA 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 RRPPOA Reserve Fund.
- d. Unless otherwise agreed by KCPOA and RRPPOA, RRPPOA shall continue to exist as a separate entity similar to The Park and The Courtyard, but with full voting privileges, even following any integration of streets, infrastructure and Reserve Fund.
- e. RRPPOA shall not have its own ACC. Instead, the KCPOA ACC shall have the same jurisdiction and authority for RRPPOA homes and ACC issues as it does for the current homes within KCE that are subject to the KCPOA ACC.
- f. RRPPOA shall provide an attachment to the KCPOA Design Guidelines, as the other sub-associations have done, defining setbacks, etc. that are consistent with the plat approved by the City Planning Commission, and this Agreement.
- g. 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 RRPPOA and integrating RRPPOA and its residents as full members of KCPOA.

2. **Contribution to KCPOA Reserve Fund.** Upon the execution of this Agreement by both parties, GOTGC shall immediately treat the 79 planned lots in Red Rock Point Filing 1 as platted for dues-paying purposes only. As such, GOTGC agrees to make quarterly payment of dues for RRP-I lots. Such payments shall commence in October 2008, and shall be at the customary dues amount for “unimproved” lots (currently approximately \$64.00 per month), and shall continue for each lot within RRP-I until a home is constructed on such lot and KCPOA begins collecting dues from a

new homeowner on that “improved” lot. Until it commences such collection of dues for “improved” lots, KCPOA will deposit these dues payments by GOTGC into the KCPOA Reserve Fund.

3. **Other Fees.** In lieu of paying the Design Review and Impact Fees mandated by the KCPOA Guidelines, the parties agree that GOTGC shall instead pay the following fees:
  - a. GOTGC agrees to pay a one-time design review fee of \$36,000 to cover costs (including consultants) of having the KCPOA ACC review a total of 36 model plans proffered by GOTGC (9 separate house plans, with 4 elevations of each). Unless the plans proffered are later materially revised prior to or during construction, no further formal design review will be required. The review by KCPOA ACC, and payment of the fee stated above, will be completed within 60 days of execution of this Agreement.
  - b. In addition to that design review fee, GOTGC also agrees to pay an impact fee of \$1,750 per unit to cover the degrading impact on KCPOA roads and infrastructure of the large volume of heavy construction traffic related to RRP-I construction of approximately 79 homes. The \$1,750 per unit impact fee shall be paid into the KCPOA Reserve Fund as follows: GOTGC will pay to KCPOA \$27,650 (\$350 per unit) upon GOTGC’s application for a grading permit for RRP-I. The balance for each unit (\$1,400 per unit) will be paid to KCPOA upon GOTGC’s application for a building permit for each new home within the RRP-I project development.
  
4. **Warranty Assurance Bond.** GOTGC hereby agrees to complete construction of streets and all infrastructure within RRP-I 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-I, 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-I, the parties shall negotiate in good faith and reach agreement on the location and designation of a construction access gate for RRP, which shall be located in the southeastern quadrant of KCE. In order to implement that designation, the parties agree as follows:
  - a. Depending upon whether the parties designate an existing gate (such as the current East Gate) or a new location (such as an access onto Fillmore Street), GOTGC shall, at its own expense, either modify the existing gate or construct a new gate to a configuration mutually agreed by GOTGC and KCPOA.
  - b. GOTGC shall deed the title to the East Gate entry road to KCPOA, at a time mutually agreeable to the parties but during GOTGC's period of construction within KCE. In any event, GOTGC shall deed such title to KCPOA simultaneously with its sale of any portions of the real estate comprising RRP to any other investor, developer, builder or similar entity (obviously excluding sales to new homeowners).
  - c. GOTGC shall reimburse KCPOA for the cost of contract guards (hired by KCPOA) to control access through the designated construction gate during the hours of construction by GOTGC. Such guards shall limit or restrict entry to GOTGC's necessary construction traffic, and, otherwise comply with KCPOA's entry access policy/guidelines and direction.
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-I by GOTGC shall be in accordance with the processes outlined in the KCPOA Design Guidelines, and shall be accomplished at a time mutually

agreeable to the parties (within 60 days of the execution of this Agreement), and shall include:

- a. Size of Homes
- b. Exterior Materials
- c. General Color Palette
- d. Setbacks
- e. Schematic Elevations, front and rear
- f. Landscaping (may be deferred, but shall be submitted for approval prior to beginning of construction). GOTGC 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.
- g. Standard decks and patios

The KCPOA ACC shall retain authority for monitoring and oversight during construction and until completion to assure compliance.

7. **Construction Rules and Standards.** During construction of RRP-I, 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 within KCE.
8. **Hill Circle Interface – Landscape Plans & Elevations.** Lots 1-6 in RRP-I shall be relatively flat grade and therefore shall not have walk-outs. Regarding Lots 7 - 22, GOTGC agrees to restrict patios and decks to a maximum of a patio and one integrated deck for walk-out homes, and one deck only on non-walk-out homes. GOTGC further confirms their commitment to integrate landscape and grading to reduce the aesthetic impact of these homes as viewed from Hill Circle. GOTGC agrees to provide a rear elevation rendering and a colored landscape plan for those units directly abutting Hill Circle, for final approval by the KCPOA ACC.

9. **Omnibus Agreement – Recreation Center.** The parties agree that the Omnibus Agreement whereby KCPOA residents are granted rights to utilize the Recreation Center shall be extended at least through Labor Day 2010, under similar financial terms and conditions. The historic cost-sharing ratios in such Agreement shall remain the same unless mutually agreed by the parties.

10. **Other Developments by GOTGC Within RRP.**

This Agreement is a stand-alone agreement for RRP-I only, and constitutes KCPOA endorsement and support only for RRP-I. Upon the execution of this Agreement, KCPOA agrees to support the RRP-I 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 Rocks Point Phase II and Phase III.

11. **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.

12. **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**

By: *Dark Good*  
Title: *Pres*  
Date: *9/22/08*

**KCPOA**

By: *Lorena Harrison*  
Title: *President*  
Date: *9/22/08*