

19 PAGE DOCUMENT

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
OF  
THE BRICKYARD AT WELLINGTON

THIS DECLARATION is made on the date herein set forth by 1631 Wellington Investors, LLC, a Colorado limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Grand Junction, County of Mesa, State of Colorado, which is more particularly described on Exhibit "A" hereto.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purposes of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Declarant hereby submits the subject real property, together with all easements, rights and appurtenances thereto and improvements thereon, to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time, as a planned community, and incorporates the terms and conditions thereof herein, except, and only to the extent, this Declaration conflicts with the terms, conditions and restrictions thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to THE BRICKYARD AT WELLINGTON HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. "Common Elements" shall mean all Limited and General Common Elements, as defined herein, and all real property contained in Tracts (including the improvements thereto, and specifically including the irrigation, detention and drainage systems within the Tracts) as shown in any subdivision plat of the property described on Exhibit "A," owned by the Association for the common use and enjoyment of all or any portion of the Unit Owners. Common Area shall be divided into two categories, "General Common Elements" and "Limited Common Elements" having the following definitions:

(i) "General Common Elements" means all Common Elements except all Limited Common Elements and may be designated by abbreviation on the plat as "GCE;"

(ii) "Limited Common Elements" means those Common Elements designated or reserved herein or on the plat map for the exclusive use by fewer than all of the Owners of Units, and may be designated by abbreviation on the plat as "LCE" and shall include all sidewalks, driveways and patios constructed by or on behalf of the Declarant for use by specific Unit Owners. The Limited Common Elements are for the exclusive use of the Owners of the Units to which they are attached or relate, their respective invitees and guests.

Section 3. "Declarant" shall mean and refer to 1631 Wellington Investors, LLC, its successors and assigns, should any person or entity acquire more than one undeveloped Unit from the Declarant for the purpose of development.

Section 4. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Unit which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for performance of an obligation.

Section 5. "Properties" shall mean and refer to that certain real property hereinbefore described, and additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 6. "Subdivision" shall mean and refer to The Brickyard at Wellington Subdivision.

Section 7. "Unit" shall mean a physical portion of the Properties within the Subdivision which is designated for separate ownership or occupancy in accordance with this Declaration and the recorded plat of the Subdivision.

ARTICLE II  
EASEMENTS, RIGHTS OF USE, ETC.

Section 1. Owner's Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to all of the General Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The right of the Association to adopt reasonable rules and regulations for the use of the Common Elements.

(b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Unit remains unpaid; and

to impose restrictions for a period not to exceed thirty (30) days on any owner for any violation of the published rules and regulations of the Association.

(c) The right of the Association, subject to the provisions of the Articles of Incorporation, to dedicate or transfer all or any part of the Common Elements to any public private agency, authority or utility for such purpose and subject to such conditions as may be determined in accordance with the procedures set forth in the Bylaws of the Association, and the agency, authority or utility to which the dedication or transfer is proposed.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right to enjoyment to the Common Elements to the members of his family, his tenants or contract purchasers provided that they reside on the Property.

Section 3. Parking Rights. Ownership of each Unit shall entitle the Owner or Owners thereof to the exclusive use of automobile parking spaces within the driveway to such Unit.

Section 4. General Restrictions.

(a) Antennae. No exterior radio and/or television antennae shall be erected or maintained in the Subdivision.

(b) Insurance Rates. Nothing shall be done or kept in the Subdivision which will increase the rate of insurance on any Association Property without the written approval of the Board, nor shall anything be done or kept in the Subdivision which would result in the cancellation of insurance on any Association Property or which would be in violation of any law. The Board of Directors of the Association shall be empowered to determine the violation of this policy and the offending Owner shall, within ten (10) days after notification by the Board of Directors of a violation, take such action as directed by the Board to abate it.

(c) No Further Subdividing. No Unit may be further subdivided, nor may any easement be granted or enlarged by any Owner without approval of the Board; provided, however, that nothing shall be deemed to prevent or require the approval of the Board for the transfer or sale of any Unit to more than one person to be held by them as tenants in common or joint tenants.

(d) Signs. To the fullest extent allowed by the Act, as it may be amended from time to time, no sign of any kind shall be displayed to the public view without the approval of the Architectural Committee, except such signs as may be used by the Declarant in connection with the development of the Subdivision and sale of residences and Units, and except such signs of customary and reasonable dimensions as set forth by the Committee as may be displayed on or from a residence advertising the residence for sale or lease. Any "For Sale" or "For Lease" signs not more than three (3)

feet by two (2) feet, shall not require Committee approval. The Committee shall not withhold approval of a standard realtor's residential sale sign.

(e) Animals. No animals of any kind, excluding Homo Sapiens, shall be raised, bred or kept, except that a reasonable number of dogs, cats or other household pets may be kept, bred or maintained for any commercial purpose. A "reasonable number" as used in this Section shall ordinarily mean no more than two (2) pets per household, provided, however, that the Association (or the Architectural Committee, or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. Each Owner shall be responsible for the control of his pets and for the clean up of waste from his pets. Each Owner also acknowledges that any and all animal ownership is also subject to the City of Grand Junction Code of Ordinances.

(f) Air Conditioning. No window air conditioning units shall be installed. Central air conditioning systems may be installed by an Owner at any time, provided the placement of the condenser therefore must be approved by the Architectural Committee, and the Owner must submit a placement drawing for prior approval.

(g) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within the Subdivision, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any such Property without the prior written approval of the Board of Directors of Brickyard at Wellington Homeowners Association.

(h) Exterior Maintenance and Repair.

(i) No improvement upon any Property within the Subdivision shall be permitted to fall into disrepair, and each improvement shall at all time be kept in good condition and repair. The Association may provide the required maintenance and repair upon approval of Board of Directors. In the event of Owner of any Unit in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Unit and the exterior of the building and any other improvements shall be added to and become a part of the assessment to which such Unit is subject.

(ii) The Association reserves the right to grant the maintenance responsibility of the Limited Common Elements attached to the Unit (the "Exterior Maintenance Area") to the Unit Owner, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to

promulgate reasonable rules and regulations regarding the maintenance by the Owner. No Owner shall make any addition or other alteration to any portion of the Common Elements without the express consent of the Association. Owners are hereby informed that improvements to the patios may require the approval of the Grand Junction Planning Department and/or the Mesa County Building Department, in addition to Architectural Control Committee approval in accordance with this Declaration.

(iii) Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in accordance herewith, subject to the requirements that any extraordinary maintenance, repair or restoration work to the Limited Common Elements for fewer than all of the Units shall be borne by the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner.

(i) Payment of Utilities. Each Owner shall be responsible for the payment of all utilities, including as, electricity, telephone, trash removal, water and sewer which are provided to each Owner's Unit. Said utilities shall be flat rate or metered, as appropriate, and bill for each shall be sent to each Unit Owner, or tenant thereof, by the utility companies provided where services are feasible.

(j) Common Elements. The Common Elements shall consist of Tracts as shown on the Final Plat of the Subdivision, the irrigation system which provides irrigation water to the Common Elements and Units, and the detention pond within the Tracts. The Association shall be responsible for the maintenance of all the Common Elements. The Association shall be responsible for the removal of snow and ice from any streets and walks included within the General Common Elements. Each Owner shall be responsible for the removal of snow and ice from his driveway and from the walks included within such Owner's Exterior Maintenance Area.

(k) Violation of Subdivision Covenants. Each resident shall comply with the covenants of the Subdivision. If any Owner, his family, or licensee, lessee or invitee violates the Covenants, the Board may suspend the right of such person to use the Association Properties, under such conditions as the Board may specify, for a period not to exceed thirty (30) days for each violation. Before invoking any suspension, the Board shall give such person notice and hearing. In the event any Owner of any Unit shall violate any Brickyard at Wellington Subdivision covenant which shall result in damage to any part of the Common Elements or improvements thereon, the Board of Directors shall have the right after notice and hearing to assess the cost of repair of such damages against the Unit of the Owner or Owners responsible for such damage. Such assessment shall be added to and become a part of the assessment to which such Unit is subject. Notwithstanding anything to the contrary in this Declaration, the Board shall not have the power to bar any Owner from use of the General Common Elements necessary to allow free access to and from his Unit, his parking areas and a public way whether as a pedestrian or in any appropriate vehicle.

(l) Drainage. There shall be no interference with the established drainage pattern over the property within the Subdivision unless adequate provision is made for proper drainage and is approved by the Architectural Committee. For the purpose hereof, "Established Drainage" is defined as the drainage which exists at the time the overall grading of any Properties is completed, or which is shown on any plans approved by the City of Grand Junction, or thereafter by the Architectural Committee. A permanent easement across the Common Elements for approved drainage purposes is hereby granted.

(m) No Hazardous Activities. No activities shall be conducted on any property and no improvements constructed on any property which are or might be unsafe or hazardous to any person or property.

(n) No Temporary Structures. No tent or shack or other temporary building, improvement or structure shall be placed upon any Property.

(o) Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement within the Subdivision, nor removal of any improvement in the Subdivision (other than repairs or rebuilding pursuant to Section 4(h) hereof, without the prior written approval of the Architectural Committee pursuant to Article V hereof.

(p) Residential Use, Rentals. No residence shall be used for any purposes other than single family, residential purposes. No structure for gainful occupation, profession, trade or other non-residential use shall be constructed on any such residential area, provided, however, that nothing in this Declaration shall prevent the rental of Property by the Owner thereof for residential purposes, subject to all the provision of the Subdivision regulations.

(q) Vehicle Storage and Repair. No house trailer, motorcycle, camping trailer, hauling trailer, running gear or boat or accessories thereto, truck or pickup or van or camper van in excess of three-fourths (3/4) ton size shall be parked, stored, repaired or maintained on any Unit or the Common Elements. This restriction shall not apply to commercial or other vehicles making business or service calls or deliveries to the residents or Owners of the Units or to the Association or to contractors within the Properties. No vehicle of any type shall be parked on any Unit or Common Elements for the purpose of making any kind of repairs, other than minor maintenance work (e.g., engine oil change, waxing, minor engine tune-up, etc.).

## Section 5. Easements.

(a) Reciprocal Easements. The Declarant hereby reserves for himself and the Association, their successors and assigns, an easement for access to and repair of all improvements and the installation and continued operation, maintenance, repair, alterative, inspection and continued replacement of utility lines, including but not limited

to, water lines, sewer lines, gas lines, telephone lines and Residential equipment thereon, over, under and across the Common Elements and that portion of any Unit situated between any Improvement and the street adjacent thereto. Declarant or Association shall, except in cases of emergency, furnish to all affected Owners twenty-four (24) hours notice before exercising the rights granted by the Articles. Perpetual reciprocal easements for the aforementioned purposes shall exist both for the benefit and burden of all the Owners.

(b) Easements for Encroachments. If any portion of an Improvement encroaches upon the Common Elements, or upon an adjoining Improvement, a valid easement for the encroachment and for the maintenance of same, so long as it stands shall and does exist. If any portion of the Common Elements encroaches upon the Improvement, a valid easement for the encroachment and the maintenance of same, so long as it stands, shall and does exist. Such encroachment and easements shall not be considered or determined to be encumbrances either on the Common Elements or the Improvement.

(c) Reservation of Easements. Declarant, for itself and any successor, reserves the use of the easements set forth in this Article II which are intended to and shall be for the benefit of all Owners, and no reference thereto need be made in any deed, instrument of conveyance or any other instrument.

(d) Construction Regulations. To the fullest extent allowed by law, the Declarant agrees to assign to the Association, and the Association agrees to assume, all enforcement rights and obligations pursuant to Storm Water Management Permits, Health Department Permits and Regulations, and Building Department Permits and Regulations (collectively, the "Permits and Regulations") relative to the construction of residences on Units within the Subdivision. Any violation of any of the Permits and Regulations may be enforced by or through the Association or its Members, under the same terms and conditions as violations of this Declaration may otherwise be enforced. Any and all costs, charges, penalties and expenses arising out of or resulting from any violations of the Permits or Regulations incurred by, or imposed upon, the Association, shall be the obligation of the Member or Members responsible (whether that responsibility is direct or through their respective contractors or invitees) and may be recovered by the Association through the imposition of Special Assessments or Default Assessments pursuant to Article III, Sections 5 and 7 of this Declaration.

(e) Easement for Utilities. The Declarant hereby grants a right of way and easement for utility purposes including, but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines and such other utility lines and incidental equipment over, under an across the Common Elements. Such utility easements and rights of way shall be binding upon the Declarant and the Association and the respective successors and assigns.

Section 6. Insurance. Notwithstanding the foregoing, the Association may elect to insure the property and all residence improvements thereon with a single

premium collective policy for all units; the premium for which shall be paid by the Association. If the Association so elects to insure the property, it agrees to provide the owners with reasonable notice of any changes or termination of such coverage, with the intention of providing the owners with an opportunity to obtain alternative insurance coverage in accordance with this Section. To be excluded from this policy is personal property, window coverings and non built-in appliances.

ARTICLE III  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Obligation/Payment. Declarant, for each Unit owned by Declarant, hereby covenants, and each Owner, by accepting a deed for a Unit, is deemed to covenant, to pay to the Association (A) the Annual Assessments imposed by the Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements, and to perform the functions of the Association; (B) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (C) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

Section 2. Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the subdivision and for the improvement and maintenance of the Common Elements, as more fully set forth in this Article III.

Section 3. Annual Assessments. The Board may establish any reasonable system for collection periodically of Annual Assessments for Common Expenses, in advance or arrears, as deemed desirable and consistent with the Articles and Bylaws of the Association. Annual Assessments for Common Expenses made shall be based upon the budgeted cash requirements as the Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, including the Association-owned irrigation system and facilities; expenses of management; taxes and special governmental assessments pertaining to the Common Elements and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, common lighting within the Common Elements; routine repairs and renovations within the Common Elements; wages; common water and utility charges for the Common Elements; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for the general, routine maintenance, repairs, and replacement of improvements within the Common Elements on a periodic basis, as needed.

The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make pro rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 4. Apportionment of Annual Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the Units, except, however, that all Common Expenses (including, but not limited to, costs of maintenance, repair and replacement) or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited in accordance with uniformly applied policies adopted by the Association.

Section 5. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements or facilities within the Common Elements, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section 5 shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 4 hereof; provided, however, that any costs incurred by the Association with regard to Limited Common Elements or as a result of negligent, reckless or willful actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by the Owner of the affected Units. Notice in writing in the amount of such budgeted Special Assessments and the time for payment of the Special Assessments shall be in accordance with Section 6 hereof.

Section 6. Annual Budget. No less frequently than each year, the Board shall adopt a proposed budget for the Association. Within thirty (30) days after adoption of any proposed budget by the Board, it shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at a meeting, more than 80% of the votes possible to be cast under this Declaration reject the budget, the budget shall be deemed for all purposes to be ratified, whether or not a quorum is present at that meeting. In the event the proposed budget is rejected, the budget most recently ratified by the Owners shall be continued until such time as the Owners have ratified a subsequent budget proposed by the Board in accordance with this Section 6.

Section 7. Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner

pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.

Section 8. Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid within 30 days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

A. Assess a late charge for each delinquency in such amount as the Association deems appropriate;

B. Assess an interest charge from the date of delinquency at the yearly rate of one and one-half percent (1-1/2%) per month, or such other rate as the Board may establish;

C. Suspend the voting rights of the Owner during any period of delinquency;

D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

E. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

F. Enforce its statutory lien rights with respect to the Unit and proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit, including the Residence and any other improvements on the Unit. Recording of this Declaration constitutes record notice and perfection of such lien. No further recordation of any claim of lien for assessment shall be required.

Section 9. Personal Obligation. The amount of any Assessment chargeable against any Unit shall be a personal and individual debt of the Owner thereof. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 10. Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Unit, except as provided in

Section 11, below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorney's fees payable relative to such Unit without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under Section 12, below.

Section 11. Subordination of Lien. The lien of the Assessments provided for in this Declaration shall have for all purposes the priority set forth in C.R.S. Section 38-33.3-316. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. No sale or transfer shall release a Unit from the lien of Assessments, except as required by applicable law. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Board. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 12. Assessment Status Statement. The Association shall furnish to an Owner or such Owner's designee, or to a holder of a security interest or its designee, upon written request, delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against that Owner's Unit and Residence. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Board, and each Owner.

Section 13. Maximum Annual Assessment. Until January 1, 2010, the maximum annual assessment shall be One Thousand Two Hundred Dollars (\$1,200.00) per year.

(a) From and after January 1, 2010, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 2010, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the votes of each class of members who voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual assessment at an amount not in excess of the maximum.

ARTICLE IV  
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Articles, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing or Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or any utilities located in the party wall shall be shared by the Owners who make use of the wall or such utilities in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however to the right of any such Owners to call for a larger contribution from the Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The rights of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of the article each party shall choose one additional arbitrator, and such arbitrations shall be by a majority of all the arbitrators.

ARTICLE V  
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Approval of Improvements Required. The approval of the Brickyard at Wellington Architectural Control Committee (the "ACC") shall be required for any Improvement to Property on any Unit except for any Improvement to Property made by Declarant and except as prior approval may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the ACC because approval in such case or cases is not reasonably required to carry out the purposes of this Declaration.

Section 2. Improvement to Property Defined. "Improvement(s) to Property,"

requiring approval of the ACC, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, fence, structure or other Improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or plants, (except within the a Unit's designated patio area, which shall not require approval of the ACC); (e) any change or alteration of any previously approved Improvement to Property including any change of exterior appearance, color or texture.

Section 3. Membership of Committee. The ACC shall consist of at least three (3) and not more than five (5) members, all of whom shall be appointed by the Board. The Association may at any time, and from time to time, change the authorized number of members of the ACC, but the number of members shall always be an odd number and shall not be less than three (3). Members of the ACC may, but shall not necessarily, be Members of the Association. Members of the ACC may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

Section 4. Committee Guidelines or Rules. The ACC may issue guidelines or rules relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. Such guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. Such guidelines or rules may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration. Such guidelines or rules may elaborate or expand upon the provisions herein relating to procedures and criteria for approval.

Section 5. Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the person proposing to make such Improvement to Property (the "Applicant") shall submit to the ACC at its offices such descriptions, surveys, pUnit plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the ACC shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. Until receipt by the ACC of all required materials in connection with the proposed Improvement to Property, the ACC may postpone review of any materials submitted for approval.

Section 6. Criteria for Approval. The ACC shall approve any proposed Improvement to Property unless it finds in its reasonable discretion that the Improvement to Property in the location indicated violates any provision of this Declaration or that it

will be materially detrimental to the appearance of the subdivision; that the appearance of the proposed Improvement to Property will not be in harmony with the surrounding areas of the Project Area; or that the Improvement to Property will materially detract from the beauty, wholesomeness and attractiveness of the Brickyard at Wellington or the enjoyment thereof by Owners. All Residences shall contain no less than two thousand two hundred (2,200) square feet of living space on the main residence level. No portion of any Residence or other structure shall be higher than allowed by applicable development and construction codes. No dramatically bright colors, as determined in the reasonable and consistently applied discretion of the ACC, shall be allowed. All fences shall be constructed of wood poles and framing, or such other materials approved by the ACC. Any fences which cross utility or irrigation easements shall be constructed with removable panels or gates to allow access for maintenance of the utilities which run in the easement. No fences may be constructed which enclose any area for which the Association has maintenance responsibilities, including, but not limited to, Limited Common Elements. The ACC may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the ACC may deem appropriate.

Section 7. Decision of Committee. The decision of the ACC shall be made within thirty (30) days after receipt by the ACC of all materials required by the ACC unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the ACC shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the ACC.

Section 8. Appeal to Board. If the ACC denies, imposes conditions on, or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Board by giving written notice of such appeal to the Association and the ACC within twenty (20) days after such denial or refusal. The Board shall review the subject ACC file and decide whether or not the proposed Improvement to Property or the conditions imposed by the ACC shall be approved, disapproved or modified. Such decision of the Board shall be final.

Section 9. Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the ACC within thirty (30) days after the date of receipt by the ACC of all required materials.

Section 10. Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible subject to delays caused by adverse weather conditions and in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the ACC in connection with the proposed Improvement to Property and any conditions imposed by the ACC.

Section 11. Notice of Completion. Upon completion of the Improvement to Property, the Applicant may give written Notice of Completion to the ACC. Until the

date of receipt of such a Notice of Completion, the ACC shall not, for any purpose, be deemed to have notice of completion of such Improvement to Property.

Section 12. Inspection of Work. The ACC or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty (30) days after the ACC shall have received a Notice of Completion from the Applicant.

Section 13. Notice of Noncompliance. If, as a result of inspections or otherwise, the ACC finds that any Improvement to Property has been done without obtaining the approval of the ACC, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the ACC, or has not been accomplished as promptly and diligently as reasonably possible, then the ACC shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within thirty (30) days after the ACC receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

Section 14. Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the ACC fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the ACC of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to Property was, in fact, completed as of the date of Notice of Completion.

Section 15. Appeal to Board of Finding of Noncompliance. If the ACC gives any notice of noncompliance, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the ACC within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the ACC shall request a finding of noncompliance by the Board by giving written notice of such request to the Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the ACC. In either event, the Board shall hear the matter at its next scheduled meeting, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

Section 16. Correction of Noncompliance. If, as provided above, the Board determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board. If the Applicant does not comply with the ruling of the Board within such period, the Board may, at its option, record a notice of noncompliance against the real property on which the noncompliance exists, may remove the non-complying Improvement to Property or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by

the Applicant or Owner to the Association, the Board may levy a Default Assessment against the Owner of the Unit for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration.

Section 17. No Implied Waiver or Estoppel. No action or failure to act by the ACC or the Association shall constitute a waiver or estoppel with respect to future action by the ACC or the Association with respect to any Improvement to Property. Specifically, the approval by the ACC or the Association of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property.

Section 18. Committee Power to Grant Variances. The ACC, may authorize variances from compliance with any of the provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations so require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the ACC. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

Section 19. Meetings of Committee. The ACC shall meet from time to time as necessary to perform its duties hereunder. The ACC may, from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the ACC, except the granting of approval to any Improvement to Property and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the ACC shall constitute action of the ACC.

Section 20. Records of Actions. The ACC shall report in writing to the Board all final action of the ACC and the Board shall keep a permanent record of such reported action.

Section 21. Estoppel Certificates. The Association shall, upon the reasonable request of any interested party and after confirming any necessary facts with the ACC, furnish a certificate with respect to the approval or disapproval of any Improvement to Property by the ACC or with respect to whether any Improvement to Property was made

in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

Section 22. Nonliability for Committee Action. There shall be no liability imposed on the ACC, any member of the Committee, any Committee Representative, the Association, the Board, or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the ACC unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the ACC shall not be responsible for reviewing, nor shall its approval of any Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

Section 23. Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the ACC shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided that, during the course of any such construction, nothing is done that will result in a violation of any of the provisions of this Declaration upon completion of construction and nothing is done that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

## ARTICLE VI GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by law or in any equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to ensuring that the Association and Unit Owners comply with zoning and other applicable ordinances of the City of Grand Junction (the "City"), and in order to prevent the diminution in the enjoyment, use or property value within the development, thereby impairing the health, safety and welfare of the Owners therein, the City, by and through its duly authorized officers and employees, is hereby granted the right to take such actions as the City may deem necessary in accordance with applicable law to enforce the covenants, conditions and restrictions contained in this Declaration., The Association shall not be dissolved, and the provisions of this paragraph, shall not be modified, amended or revoked, without the written consent of the City, evidenced by the affirmative vote of a majority of the City Council

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.



EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTIES

Lot 2, Brickyard Subdivision, Section 12, Township 1 South,  
Range 1 West of the Ute Meridian.