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**DECLARATION
OF
COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
OF
FOUNTAIN GREENS MASTER ASSOCIATION**

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PREAMBLE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND EASEMENTS OF FOUNTAIN GREENS MASTER ASSOCIATION is made as of the date hereinafter set forth, by FOUNTAIN GREENS, LLC, a Colorado Limited Liability Company (the "Declarant").

WHEREAS, Declarant is the owner of certain real property located in Mesa County, Colorado as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Declarant intends to construct a planned community on said real property together with other improvements thereon; and

WHEREAS, Declarant will convey said real property subject to the protective covenants, restrictions, reservations and obligations as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the real property described on Exhibit A attached hereto, 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. In the event the said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that all of the said real property described on Exhibit A shall be held or sold, and conveyed subject to the following covenants, conditions and obligations, all of which are declared and agreed to be for the protection of the value of the said real property, and for the benefit of any persons having any right, title or interest in the said real property and which shall be deemed to run with the land and shall be a burden and a benefit to any persons acquiring such interest, their grantees, heirs, legal representatives, successors and assigns.

ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACC means an architectural control committee of the Association appointed by the Board.

1.2 Act means the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101, et seq. as it may be amended from time to time.

1.3 Agencies means and collectively refers to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

1.4 Articles means the Articles of Incorporation of the Association as they may be amended from time to time.

1.5 Assessments means the (a) Common Expense Assessment, (b) Special Assessment, (c) Individual Assessment, and (d) Fines levied pursuant to this Declaration.

1.6 Assessment Lien or Lien means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment become due.

The recording of this Declaration constitutes record notice and perfection of the lien. No further recordation or claim of lien for the Assessment is required.

1.7 Association means FOUNTAIN GREENS MASTER ASSOCIATION, a Colorado Corporation, not for profit, organized pursuant to §38-33.3-301 of the Act, its successors and assigns, the Articles of Incorporation and Bylaws of which, as herein defined, along with this Declaration, shall govern the administration of the Property, the Members of which shall be all of the Owners of the Lots within the Property.

1.7.1 Sub-Association. An association that may be created hereunder for a lesser portion of the real property included within the real property described in Exhibit A hereof.

1.8 Board of Directors or Board means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

1.9 Building means any building improvements constructed on the common areas by the Association.

1.10 Bylaws means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association, as they may be amended from time to time.

1.11 Common Area means all the real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

In the event that additional real property is made subject to this Declaration in the manner provided in ARTICLE THIRTEEN hereof, "Common Areas" shall, from the date such additional real property is made subject to this Declaration, include any parts thereof designated as "Common Areas" (including all improvements thereon) in such Supplemental Declarations.

1.12 Common Expense Assessments means those assessments defined in Paragraph 6.2 hereof.

1.13 Common Expense Assessments Liability means the liability for the common Expense Assessment allocated to each Lot.

1.14 Common Expenses means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

1.15 Costs of Enforcement means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

1.16 Declarant means FOUNTAIN GREENS, LLC, a Colorado limited Liability Company, or its successors as defined in §38-33.3-103(12) of the Act.

1.17 Declaration means DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF FOUNTAIN GREENS MASTER ASSOCIATION, as may be amended from time to time, together with any and all Supplemental Declarations that may be recorded from time to time pursuant to the provisions of ARTICLE THIRTEEN hereof, which may create Sub-Associations hereunder and also including but not limited to plats and maps.

1.18 Development Rights and Special Declarant Rights means the rights as defined by §§38-33.3-103(14) and 38-33.30-103(29) of the Act reserved by the Declarant under ARTICLE TEN hereof.

1.19 Eligible Mortgagee means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address and the legal description of property in which it is interested, requesting that the Association notify them on any proposed action requiring the consent of a specified percentage of Eligible Mortgagees.

1.20 First Mortgagee means any Person which owns, holds, insures or is a governmental guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering a Lot within the Property. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.21 First Security Interest means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.22 Guest means (a) any person who resides with an Owner within the Property; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Lot within the Property, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.

1.23 Lot means the plots of land subject to this Declaration and designated as a "Lot" on any subdivision plat or drawing of the Property recorded by Declarant in the office of the Clerk and Recorder of Mesa County, Colorado, together with all appurtenances and improvements now or in the future on the Lot, including a Residence. The term "Lot" shall, to the fullest extent possible, be synonymous with the term "Lot" in C.R.S. § 38-33.3-103(30).

1.24 Dwelling Unit shall mean and refer to any residential improvement constructed upon the property described in Exhibit A hereto, including single family residences, patio homes, townhomes and condominiums. The maximum number of dwelling units to be constructed is 237.

1.25 Managing Agent means any one or more persons employed by the Association who is engaged to perform any of the duties or functions of the Association.

1.26 Member means each Owner, as set forth in Paragraph 1.27 hereof.

1.27 Notice and Hearing means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Bylaws.

1.28 Owner means the owner of record of the fee simple title to any Lot which is subject to this Declaration, whether one or more persons or entities, including the Declarant, excluding, however, those having an interest merely as security for the performance of any obligation.

1.29 Period of Declarant Control means that period of time defined in Paragraph 4.7 hereof.

1.30 Person means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.31 Property means and refers to that certain real property described on Exhibit A attached to this Declaration. The Property (as the term is defined in C.R.S. § 38-33.3-103(30) is also described on that certain plat recorded in the office of the Clerk and Recorder of Mesa County, Colorado, at Book 17, Page 237-239

1.32 Residence means the single or multifamily dwelling constructed on any one Lot.

1.33 Rules means the Rules and Regulations adopted by the Board of Directors for the regulation and management of the Property and water system (which may include watering restrictions) as amended from time to time.

1.34 Security Interest means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.35 Special Assessment means those Assessments defined in Paragraph 6.4 hereof.

1.36 Supplemental Declaration means a written instrument containing covenants, conditions, restrictions, reservations, easement and other provisions, or any combination thereof, which is recorded, annexing in accordance with ARTICLE THIRTEEN hereof, a portion of the real property described on Exhibit B hereof to The Property.

1.37 Turnover Date means the date the Period of Declarant Control terminates as more fully set forth in Paragraph 4.7 hereof.

1.38 VA and/or FHA Approval means that the Property has been approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots within the Property.

1.39 Votes. Each Lot Owner has one vote.

ARTICLE TWO: COMPLIANCE

2.1 Compliance With Provisions of Declarations, Articles and Bylaws of the Association. Each Owner shall comply strictly with, and shall cause each of his or her Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws of the Association, and the decisions, rules, regulations and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Each Owner shall be responsible for the compliance by his or her Guests.

Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by any aggrieved Owner.

2.2 Restrictions on Sale of a Lot. The right of an Owner to sell, transfer or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restriction and such Lot may be sold free of any such restrictions.

2.3 Restrictions on Mortgaging Lots. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Lot. There is no requirement for the use of a specific lending institution or particular type lender.

ARTICLE THREE: VARIOUS RIGHTS AND EASEMENTS

3.1 Owner's Rights in the Common Areas. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas, subject to the Development Rights and Special Declarant Rights of the Declarant reserved herein and the following rights of the Board of Directors:

(a) To borrow money to improve the Common Areas and to mortgage said Common Areas as security for any such loan; provided, however, that the Association may not subject any portion of the Common Areas to a security interest unless such is approved by Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Lots not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners entitled to cast at least eighty percent of the votes allocated to Lots not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Article as more fully set forth in § 38-33.3-312 of the Act.

(c) To promulgate and adopt Rules and Regulations with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of a Member for any period during which any Assessment remains unpaid and, for a period not to exceed sixty days, for any infraction of the Declaration, Bylaws or Rules and Regulations.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Areas or other property by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(g) To close or limit the use of the Common Areas temporarily while maintaining, repairing or making replacements in the Common Areas, or permanently if approved by Members to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Lots not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act; unless required to be open by the City of Grand Junction.

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Board of Directors in Paragraph 4.13 hereof.

3.2 Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Areas and facilities to their Guests.

3.3 Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. The easement shall extend for whatever period the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Areas or on a Lot. Encroachments referred to herein include, but are not limited to, encroachments caused by survey errors.

3.4 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon all driveways located in the Property, in the performance of their duties.

3.5 Utility Easements. The Board of Directors has the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

3.6 Owner's Easement for Access. Each Owner shall have a nonexclusive easement for access between his or her Lot and the streets within the Property. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owner's Lot. Such easement shall extend for whatever period of time the need for access shall exist.

3.7 Easements Deemed Appurtenant. The easements, uses and rights herein created for an Owner shall be perpetual and appurtenant to the Lots owned by such Owner. All conveyances or any other instruments affecting title to a Lot shall be deemed to grant and reserve the easements, uses and rights as provided for herein, as though set forth in said document in full, even though no specific reference to such easements, uses or rights appear in such conveyance.

ARTICLE FOUR: THE ASSOCIATION

4.1 Name. The name of the Association is FOUNTAIN GREENS MASTER ASSOCIATION.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners and the residents of the Property. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes.

The Board of Directors shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and Affairs of the Association.

4.3 Board of Directors. The Affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.5 Membership. Members of the Association shall be every record owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds interest in any Lot, all such persons shall be Members.

4.6 Voting Rights. The Association shall have one class of voting membership. Owners shall be entitled to one vote for each Lot owned.

The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest of the Lot is made prior to the completion of the vote, in which case the vote is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised, as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such shall be lost.

The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Property.

4.7 Declarant Control of the Association. Subject to Paragraph 4.8 hereof, there shall be a "Period of Declarant Control" during which a Declarant may appoint and remove the officers and members of the Board. The Period of Declarant Control begins with the recording hereof and terminates no later than the earlier of:

- (a) sixty days after conveyance of seventy-five percent of the Lots that may be created to Owners other than the Declarant; or
- (b) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business to Owners other than Declarant; or
- (c) two years after any right to add new Lots was last exercised; or
- (d) such other earlier time as the Declarant may, in its discretion, determine.

4.8 Election by Owners. Not later than sixty days after conveyance of twenty-five percent of the Lots that may be created to Owners other than a Declarant, at least one member and not less than twenty-five percent of the members of the Board of Directors, must be elected by Owners other than the Declarant.

Not later than sixty days after conveyance of fifty percent of the Lots that may be created to Owners other than a Declarant, not less than thirty-three and one third percent of the members of the Board of Directors must be elected by Owners other than the Declarant.

Not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of Directors of at least three members, at least a majority of whom shall be Owners other than Declarant. The Board shall elect the officers. The Owners elected to the board shall take office upon election.

4.9 Delivery of Documents by Declarant. Within sixty days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall

deliver without expense to the Board all property of the Owners and of the Association held by or controlled by the Declarant, including without limitation, the following items:

- (a) The original or a certified copy of each recorded Declaration, and each amendment, the Association's Articles of Incorporation, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;
- (b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with §38-33.3-303(9)(b) of the Act;
- (c) The Association funds or control thereof;
- (d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common Areas, and a copy of any plans and specifications used in the construction of improvements in the Property.
- (e) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
- (f) Any other permits issued by governmental bodies applicable to the Property and which are currently in force or which were issued within one year prior to the date on which owners other than the Declarant took control of the Association;
- (g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;
- (h) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;
- (i) Employment contracts in which the Association is a contracting party; and
- (j) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

4.10 Budget.

(a) The Board of Directors shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year. Within thirty days after the adoption of any Budget by the Board, the board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to each Owner and shall set a date

for a meeting of the Owners to consider ratification of the budget not less than fourteen days nor more than sixty days after delivery of the summary.

Unless at that meeting Owners to which at least sixty-seven percent of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) If the Board of Directors deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Paragraph 4.10(a) above, the Board may adopt a proposed amendment to the budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least sixty-seven percent of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present.

4.11 Association Agreements. Any agreement for professional management of the Property or any contract purporting to bind the Association may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice.

The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Period of Declarant Control unless the Association is provided with a right of termination of any such contract without cause, which right is exercisable without penalty at any time after such transfer from Declarant Control upon not more than thirty days' notice to the other party thereto.

4.12 Indemnification. Each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of him or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law. The power to collect money through liens shall be available to pay for this indemnification.

4.13 Certain Rights and Obligations of the Association.

(a) Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an Attorney-in-Fact to deal with the Property upon its damage, destruction, condemnation and obsolescence.

The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Common Areas so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Property upon its destruction, condemnation or obsolescence as hereinafter provided.

The acceptance by any person of any interest in any Lot shall constitute an appointment of the board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Property and to perform all of the duties required of it.

(b) Contracts, Easements and Other Agreements. Subject to the rights and requirements of the City of Grand Junction, the Board of Directors shall have the right to enter into, grant, perform, enforce, cancel and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guests, and other persons, concerning the Common Areas.

Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(c) Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Members on a self-supporting Special Assessment or Common Expense Assessment basis.

(d) Implied Rights. The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.14 Certain Rights and Obligations of the Declarant. So long as there are unsold Lots within the Property owned by the Declarant, the Declarant shall enjoy the same rights and assume the same duties as they relate to each individual unsold Lot.

ARTICLE FIVE: COMMON AREA

5.1 Conveyance of Common Area. From time to time, Declarant may convey to the Association by written instrument recorded with the Clerk and Recorder of Mesa County, Colorado, certain parcels of the Property as Common Area for use by all of the Owners, subject to the limitations set forth in this Declaration.

5.2 Maintenance. The Association shall maintain and keep the Common Area, Park and Open Space in good repair, and the cost of such maintenance shall be funded with assessments as provided in ARTICLE SIX. This maintenance shall include, but shall not be limited to, upkeep, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements on the Common Areas. In the event the Association does not maintain or repair the Common Area, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. The Association shall further maintain a water supply system and deliver water to each Lot on the Property. The cost for such water shall be funded by the Assessments as provided in ARTICLE SIX.

5.3 Maintenance and Installation of Trees. Each owner, including Declarant, by acceptance of a Deed therefor, covenants and agrees and shall be personally obligated to install, maintain and replace trees upon private lots, as referenced in the approved Landscaping Plan for Fountain Greens Subdivision. The approved Landscaping Plan is shown on Exhibit B.

ARTICLE SIX: ASSESSMENTS

6.1 Obligation. Each Owner, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without set off or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Lot.

The personal obligation for delinquent assessment shall not pass to such Owner's successors in title unless expressly assumed by them.

6.2 Purpose of the Assessments. The Common Expense Assessment shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Property and the Members of the Association. Such purposes shall include but not be limited to the improvement, repair, maintenance, reconstruction and insuring of the Common Areas, maintenance of a water supply system and pressurized irrigation system and delivery of water

to each Lot on the Property. Upon approval of Owners to which at least sixty-seven (67%) percent of the votes in the Association are allocated, each Owner may be required to install individual water meters and thereafter pay for water based on actual usage at a rate determined by the Board.

Such Assessment shall include the establishment and maintenance of a reserve fund for the improvement, maintenance, reconstruction, and repair of the Common Areas on a periodic basis, provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

6.3 Date of Commencement of the Common Expense Assessment. The Common Expense Assessment shall commence as to all Lots on the first day of the month following the effective date of the first budget of the Association.

Until the commencement of the collection of the Common Expense Assessments, the Declarant shall pay all of the expenses incurred and paid for by the Association, not to include any allocation to the reserve fund.

6.4 Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to the cost of any construction, reconstruction, improvement, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association provided that any such assessment shall have the approval of Owners to whom at least sixty-seven percent of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance herewith. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Owners not less than fifteen days nor more than thirty days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies to whom at least sixty percent of the votes in the Association are allocated shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

If the Property has been or is to be approved by the Federal Housing Administration and/or Veterans Administration, then until the termination of the Period of Declarant Control

in accordance with Paragraph 4.7 hereof, all Special Assessments for capital improvements in addition to the approval of the Owners as required above will require the written consent of the Veterans Administration and/or the Federal Housing Administration.

6.5 Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules and Regulations of the Association. No such Fine shall be levied until such Owner or Owners have been given a Notice and Hearing as provided for in the bylaws of the Association.

Fines may be levied in a reasonable amount as determined from time to time by the board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement.

6.6 Individual Assessments. The Board of Directors shall have the right to levy any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 6.3, 6.4, 6.5 and 6.10 hereof. No Individual Assessment shall be levied until the Owner or Owners to be charged has been given a Notice and Hearing as provided for in the Bylaws of the Association. Individual Assessments shall be collected as part of the Costs of Enforcement.

6.7 Levy of Assessments. Common Expense Assessments shall be levied on all Lots based upon a budget of the Association's cash requirements to accomplish the purposes set forth in Paragraph 6.2 hereof. The Common Expense Liability shall be prorated among the Lots.

The omission or failure to the Board of Directors to levy the Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay in the future.

Special Assessments shall be levied in accordance with Paragraph 6.4 hereof.

Fines and Individual Assessments may be levied at any time as required. Both assessments are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Areas or the abandonment of his or her Lot.

6.8 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

Common Expense Assessments shall be levied on an annual basis and shall be due and payable in monthly installments, provided that the first Assessment levied shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

Special Assessments shall be due and payable as established by the Board but may be payable on an installment basis as determined by the Board.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

6.9 Remedies for Nonpayment of Assessment. If any Assessment (to include Costs of Enforcement) is not fully paid within fifteen days after the same becomes due and payable, then:

(a) Interest shall accrue at the default rate set by the Board of Directors on all amounts of the Assessment in default accruing from the due date until date of payment;

(b) The Board may accelerate and declare immediately due and payable all unpaid installments of the Assessment otherwise due during the fiscal year during which such default occurred;

(c) The Board may bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and

(d) The Board may proceed to foreclose its lien against the Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing elective remedies or in any way waiving the Association's lien for the Assessments.

6.10 Assessment Lien. The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board of Directors, plus Costs of Enforcement, when the Lot Owner fails to pay as required herein. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except the following:

(a) Real Property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(b) The lien of any loan evidenced by a first mortgage of record (including deed of trust) and any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanic's or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may record a notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. The recordation cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for any Assessments except that sale or transfer of any Lot pursuant to foreclosure of any first mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, cancellation or forfeiture shall relieve any Owner from continuing personal liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Costs of Enforcement against that Lot which have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

In any action by the Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust.

The Assessment Lien hereby created shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust. Without prejudice to any other right or remedy, the

Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Lot for Assessment and Costs of Enforcement shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment lien.

6.11 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for its expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be credited the Owners in proportion to their Allocated Interests or credited to them to reduce their future Assessments.

6.12 Working Capital Fund. Each Owner, at the time the Owner acquires his or her Lot, shall make a non-refundable contribution to the Working Capital Fund of the Association in the amount equal to at least two months installment of the Common Expense Assessment for such Lot. Such sum shall be held in trust as a reserve for working capital, and may be used for unforeseen expenditures or to purchase any additional equipment or services as the Board deems necessary or appropriate. Such payment shall not be considered as an advance payment of the regular Common Expense Assessment or relieve an Owner from making the regular monthly payment of the Common Expense Assessment as the same becomes due.

The Working Capital Fund is to be turned over to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. Upon a later transfer of his or her Lot, an Owner shall be entitled to a credit from his or her transferee (but not from the Association) for the aforesaid contribution to the Working Capital Fund.

Declarant may reimburse itself for funds it paid the Association for an unsold Lot's share paid at the time of turnover to the Working Capital Fund by using funds collected at Closing when subsequent Lots are sold. Declarant is prohibited from using the Working Capital Fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits while it has control of the Association.

6.13 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request delivered personally or by certified mail, return receipt requested, to the Association's Registered Agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within fourteen business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is timely furnished to the Owner or First Mortgagee, then the Association shall

have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request.

6.14 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. The Declarant is exempt from the requirements of this Paragraph 6.14.

ARTICLE SEVEN: RESTRICTIVE COVENANTS AND OBLIGATIONS

7.1 Use and Occupancy of the Lots. Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot. Subject to the Development and Special Declarant Rights reserved by the Declarant in ARTICLE ELEVEN hereof and the leasing provisions of Paragraph 6.11 hereof, no Lot within the Property shall be used for any purpose other than single-family residential purposes, which includes townhomes, condominiums, apartments, duplex, tri-plex and four-plex lots, as generally defined or for a home occupation so long as (a) such occupation is allowed by applicable Zoning Codes, (b) employs no outside employees, and (c) requires no signage or parking, provided, however, that uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited unless approved by the Board of Directors.

7.2 Use of the Common Areas. Each Owner and his or her Guests may use the appurtenant Common Areas in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. the Board of Directors may adopt Rules and Regulations governing the use of the Common Areas, but such Rules and Regulations shall be uniform and nondiscriminatory. Each Owner, by the acceptance of his or her deed or other instrument of conveyance or assignment and such Owner's Guests agree to be bound by any such adopted Rules and Regulations.

There shall be no obstruction of the Common Areas, nor shall anything be stored on any part of the Common Areas without the prior written consent of the Board of Directors. Nothing shall be altered, constructed on, or removed from the Common Areas except upon the prior written consent of the Board of Directors of the Association.

7.3 Pets Within The Property. No animals, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Property; except that dogs, cats or other household animals may be allowed only in Lots occupied by Owners (not renters) so long as they are not raised, bred or maintained for any commercial purpose, and are kept in such number or in such manner as to create a nuisance or inconvenience to any residents of the Property.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or

are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take such action or actions as it deems reasonably necessary to correct the violation to include after Notice and Hearing, directing permanent removal of the pet or pets from the Property.

Household pets shall not be allowed to run at large within the Property, but shall at all times be under the control of such pet's Owner and such pets shall not be allowed to litter the Common Areas. Dogs shall be on a leash while on the Common Areas.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Property or incurred by the Association in cleanup after such pets may be levied after Notice and Hearing against such pet's Owner as an Individual Assessment in accordance with Paragraph 6.6 hereof.

The provisions of Paragraph 14.2 notwithstanding, the Board of Directors may amend this Paragraph from time to time to better serve the needs of the Property without the consent of the Owners or First Mortgagees.

7.4 Nuisances. No noxious or offensive activity shall be carried on within the Property, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as an attractive residential community. Habitually barking, howling or helping dogs shall be deemed a nuisance. Decks, patios and balconies shall not be used for storage. No activity shall be conducted on any part of the Property which is or might be unsafe or hazardous to any person. All rubbish, trash or garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

7.5 Vehicular Parking, Storage and Maintenance.

(a) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the Property only if such parking or storage is done wholly within the enclosed garage located on a Lot or is otherwise screened from any street adjoining the property by a fence at least 6 feet high. Any such vehicle may be parked as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots or any improvements located thereon.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on or within the Property. An "abandoned or

inoperable vehicle” shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof (if such owner thereof can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter the Association shall have the right to remove the vehicle at the sole expense of the Owner thereof. Said expenses to be levied against the Owner of the vehicle as an Individual Assessment in accordance with Article 6.6 hereof.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers, or boats, may be performed or conducted on or within the Property, unless it is done within a 24-hour time period or within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restrictions shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

7.6 No Unsightliness. No activity shall be conducted on any part of the Property which is or might be unsafe, unsightly, unhealthy or hazardous to any person. No Owner shall modify, alter, repair, decorate, redecorate, or improve the exterior of any Lot or Improvement thereon or any of the Common Areas without the express written approval of the ACC.

7.7 Prohibition of Certain Activities. Nothing shall be done or kept in any Apartment or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Common Area or increase the rate of the insurance on the Common Area over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors.

Nothing shall be done or kept in any Lot or improvement thereon or in the Common Areas which would be in violation of any statute, ordinance, regulations, or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on in any Lot or in the Common Areas, nor shall anything be done therein which may be or may become an annoyance or nuisance to others. No sound shall be emitted on any part of the Property which is unreasonably loud or annoying.

7.8 Antennas/Swamp Coolers.

(a) Except as may otherwise be permitted by the Architectural Control Committee, all antennae shall be installed inside any residence; provided, however, that 18" satellite receivers may be installed on the exterior provided the placement is approved by the Architectural Control Committee.

(b) Swamp coolers shall be located below the ridge line of the house and approved by the Architectural Control Committee.

7.9 Restrictions on Signs. No signs or advertising of any nature shall be erected or maintained on any part of the Property without prior written consent of the board of Directors. The Board shall permit the placing of at least one sign of reasonable size and dignified form to identify the Property and the Lots therein.

7.10 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within the Common Areas, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees and costs, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 6.6 hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.10 shall be made by the Board of Directors and shall be final.

7.11 Lease of a Lot. With the exception of a First Mortgagee who has acquired title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Lot upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) An Owner may lease his or her Lot upon such terms or conditions as he or she may see fit so long as the term of the lease is for six months or more;

(b) Any lease or rental agreement is subject to the terms of this Declaration and the Bylaws, Articles of Incorporation and the Rules and Regulations of the Association;

(c) The failure of the lessee or renter to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them;

(d) The Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

7.12 No Temporary Structures. No structure of a temporary nature, such as a tent, garage, trailer house, barn, or other outbuilding or basement shall be used on any Lot at any time as a residence, either temporarily or permanently. All structures shall be of new construction.

7.13 No Subdivision. No Lot may be re-subdivided.

7.14 No Dumping. No Lot shall be used or maintained as a dumping ground for rubbish or storage area for junk. Trash, garbage or other waste must be kept in sanitary containers. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed on any property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others, or which may constitute a health hazard.

7.15 Signage. With the exception of one "for sale" or "for rent" sign per Lot, which shall not be larger than 18 by 24 inches, and except for signs used by the Declarant for subdivision advertisement and signs used by builders to advertise during the building and sale period of a home of a style and design approved by the Board or the ACC, no signs, advertising devices or billboards shall be displayed within the Property unless written approval thereof is granted by ACC.

7.16 Screening. All wood piles or storage areas of any kind shall be kept screened by adequate vegetation to conceal them from view as much as possible.

7.17 Residence Exteriors. The Architectural Control Committee shall consider the following guidelines in approving residential exteriors:

- (a) Each living unit shall have its total exterior wall area (excluding windows, doors, soffits and facias) comprised of brick, stone, siding, stucco or a combination thereof;
- (b) compatibility of the proposed earth tone colors with neighboring houses;
- (c) roofing materials compatible with the "look and feel" of the neighborhood;
- (d) location and screening of any accessory structure or satellite dish;
- (e) all fences shall be approved by the Architectural Control Committee and colored with the same pigments as selected by the Committee.

The control of the Committee with regard to color, exterior materials, placement of accessory structures, patio covers, screening requirements and approval of landscaping plans and exterior lighting shall be absolute.

7.18 Tanks. No tanks of any kind, above or below ground, shall be permitted.

7.19 Lights. All exterior lights and light standards, other than ordinary low intensity lights, shall be subject to approval by the ACC for harmonious development and prevention of lighting nuisances.

7.20 Hazardous Activity. No activities shall be conducted within the Property and no improvements constructed within the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Property; and no open fires shall be lighted or permitted within the Property (including burning of trash or rubbish) except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

7.21 Utility Lines. All gas lines, electric lines, telephone lines and television cable shall be buried underground from their primary source at the Lot line at the Owner's sole expense.

7.22 Drainage. Except as in approved grading, drainage and erosion control, no structure shall be placed or located in such manner that will obstruct, divert or otherwise alter the natural water drainage courses and patterns, and no landscaping or changes to the existing terrain shall be made which shall obstruct, divert or otherwise alter such drainage. ACC will approve all landscaping and site plans. Landscaping of all Owner Maintenance Areas must be completed within one year after a building permit is issued.

7.23 Fences. No hedges or fences shall be permitted within the subdivision which are higher than six feet, except fences constructed by the Declarant unless specific written permission is given therefor by the ACC. In determining whether such permission should be given, the ACC shall consider the topography and desires of the neighborhood.

On double frontage and corner lots, fences up to four feet in height may be placed on the property line along the street except in the front yard setback along the street that the homes faces. Fences in these front yards must comply with City of Grand Junction Zoning and Development Code requirements. Exception: No fence is allowed along 25 Road in the building setback except the wrought iron fence on the property line provided by the developer and fences four feet in height on side property lines that connect with the developer provided fence at right angles.

7.24 No Mining. No property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, unless by written approval of the ACC.

7.25 Other Buildings. Detached accessory buildings shall not be constructed except upon prior ACC approval. Buildings shall not exceed seven (7) feet in height, with roof materials and color being the same as the residence.

7.26 Weed, Infectious Plant Disease and Insects. No Owner shall permit anything or condition to exist upon his Lot which shall induce, breed or harbor infectious plant diseases, weeds or noxious insects.

The Association, acting through its Board of Directors, shall have the standing and power to enforce all of the above Restrictive Covenants and Obligations.

ARTICLE EIGHT: EXTERIOR MAINTENANCE AREA AND SPECIAL EASEMENT

8.1 Exterior Maintenance. Except as otherwise provided herein, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed thereon, and the interior of any fence on the boundary line of a Common Area and a Lot shall be the responsibility of the Owner(s) thereof. It shall be the duty and obligation of each Owner to landscape the front yard of his or her Lot within sixty (60) days from issuance of a Certificate of Occupancy and the backyard of his or her Lot within one (1) year from issuance of a Certificate of Occupancy.

8.2 Owner Maintenance Area. Each Owner shall maintain the patio, lawn and garden area within his or her Lot and adjacent to his or her Residence. The Association shall have the right to promulgate reasonable rules and regulations regarding such maintenance.

8.3 Owner Maintenance of Shared Driveways. Wherever Owners shall share a common private driveway, each Owner, including Declarant, by acceptance of a Deed therefor, covenants and agrees, and shall be personally obligated to maintain said common private driveway in the same proportion as such common private driveway is shared with other Owners.

8.4 Special Easement. Declarant hereby reserves for itself and grants to the Association, the Board of Directors, and their respective representatives, a nonexclusive easement to enter upon and use each Lot as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to these Declarations.

8.5 Maintenance Contract. The Association or Board of Directors may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association for maintenance. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board. The Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

8.6 Party Walls.

A. Each wall which is built as a connection of two or more Residences and which is constructed upon the property line between two Residences shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 8.7, the general rules of law of the State of Colorado regarding party walls and liability for property damage due to negligent or intentional acts or omissions shall apply thereto.

B. The cost of reasonable repair and maintenance of a party wall damaged or destroyed without the fault of an Owner shall be shared equally by the Owners of all Residences of which such wall is a part. In such event, any Owner of a Residence of which such wall is a part may restore or reconstruct it, any the other Owners of Residences of which such wall is a part shall contribute and share equally with such Owner in the cost of such restoration or reconstruction.

C. The cost of reasonable repair and maintenance of a party wall damaged or destroyed through the negligent or intentional act or omission of an Owner shall be borne exclusively by such Owner. Any other Owner of a Residence of which such wall is a part may cause the repair or reconstruction of such party wall, and the Owner whose negligence or intentional acts or omissions caused such damage or destruction shall promptly reimburse the reasonable costs of such repair.

8.7 Owner's Failure to Maintain or Repair. In the event that a Lot and the improvements thereupon are not properly maintained and repaired, or in the event that the improvements on the Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon.

ARTICLE NINE: INSURANCE/CONDEMNATION

9.1 Authority to Purchase/General Requirements. Except as provided below, all insurance policies relating to the Common Areas shall be purchased by the Board of Directors. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association. The Owner of a Lot shall be responsible for insurance for his or her Lot and the improvements thereon.

THE ASSOCIATION WILL NOT PROVIDE SUCH INDIVIDUAL LOT COVERAGES IN ITS MASTER POLICIES.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made

against the Association, Owner or first Mortgagee, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households.
- b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the board cure the defect and such defect is not cured within forty-five days after such demand;
- c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 9.4 hereof may not be canceled, substantially modified or not renewed (including cancellation for nonpayment of premium) without at least thirty days' prior written notice to the Board of Directors and each Owner and First Mortgagee to whom a certificate of insurance has been issued, at their last known address;
- d) Such policy must provide that no assessment may be made against a First Mortgagee and that any assessment made against others shall not become a lien on a Lot superior to the lien of a First Mortgagee except as provided for in the Act;
- e) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner, if such coverage is available;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names the First Mortgagee in the policy its beneficiary.

The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall be consistent with good business practices, and at reasonable intervals obtain

a written appraisal for insurance purposes, showing that the insurance represents one hundred percent of the current replacement cost as defined above.

Such policies shall also provide:

That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the board of directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgages, unless otherwise required by law.

A certificate, together with proof of payment of premiums, shall be delivered by the insured to any Owner of First Mortgages requesting the same, at least thirty days prior to expiration of the then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the individual Owners and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, Five Thousand dollars or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated. The Board shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Paragraph 5.6 hereof.

9.2 Liability Insurance. The Board of directors shall obtain and maintain comprehensive general liability including eviction, libel, slander, false arrest and invasion of privacy and property damage insurance covering all of the Common Areas.

Such coverage under this policy shall include, without limitation, the legal liability of the insured for property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily

covered with respect to Property similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Workmen's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance, Severability of Interest Endorsement.

IN THE EVENT THE ASSOCIATION HOSTS A FUNCTION AND CHARGES FOR FOOD OR DRINK AND LIQUOR IS SERVED, THERE WILL BE NO HOST LIQUOR LIABILITY COVERAGE FOR THE ASSOCIATION. IF MONEY IS CHARGED, A LIQUOR LIABILITY POLICY WOULD BE NEEDED TO GIVE COVERAGE TO THE ASSOCIATION.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

9.3 Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. the insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who were without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force.

The policy must include a provision that calls for ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each service that services a Fannie Mae-owned or securitized mortgage in the Property.

A management agent that handles funds for the Association should be covered by its own fidelity insurance policy which must provide the same coverage required of the Association.

9.4 Additional Insurance.

a) If the area where the Property is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Property shall be maintained providing coverage equivalent to that provided under the

National Flood Insurance Program in an amount of one hundred percent of the Property's current replacement cost or the maximum amount available.

The Association must also maintain coverage for all Common Areas for one hundred percent of their replacement cost as defined above. A separate Association endorsement is required if not already a part of the policy.

Deductibles may not exceed the lower of Five Thousand Dollars or one percent of the face amount of the coverage. Fund for such deductibles must be included in the Association's Reserve and be so designated.

If the Property at the time of the recording of this Declaration is not identified as a Special Flood Hazard Area but becomes reclassified at a later date as such, the Board of Directors shall obtain flood insurance for the Property in accordance with the above. Conversely, flood insurance may be discontinued if the Property is "removed" from the "Flood Plain."

b) Adequate Directors and Officers liability insurance, if available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

c) Workmen's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law;

d) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Property;

e) If it is determined by a First Mortgagee that the existing coverages do not adequately protect the Property, the Board of Directors shall obtain such additional coverages.

9.5 Premiums. Insurance premiums for insurance carried by the Association shall be paid for by the Association as a Common Expense.

In the event there are not sufficient funds generated from the Common Expense Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.6 hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among Owners in the same proportion as the Common Expense Assessment.

9.6 Separate Insurance. No owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of

Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

9.7 Damage to Property. Any portion of the Property for which insurance is required under §38-33.3-313 of the Act or for which insurance carried by the Association is in effect that is damaged or destroyed, shall be repaired or reconstructed by the Association.

9.8 Condemnation. If all or part of the Property is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

ARTICLE TEN: MAINTENANCE, REPAIR AND RECONSTRUCTION

10.1 By the Association: The Association shall be responsible for the maintenance, repair and reconstruction of all of the Common Areas in accordance with this ARTICLE TEN.

10.2 By the Owner.

Each Owner shall keep his or her Lot, together with improvements and appurtenances in good order, condition and repair and in a clean and neat condition.

ARTICLE ELEVEN: DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

11.1 Reservation. The Declarant reserves the following Development and Special Declarant Rights ("Declarant Rights") which may be exercised, where applicable, anywhere within the Property:

- (a) To complete the improvements within the Property;
- (b) To exercise any Declarant Rights reserved herein;
- (c) To maintain business/sales offices, parking spaces, management offices, storage areas, nursery, construction yard signs, advertising and model apartments;
- (d) To maintain signs and advertising on the Common Areas to advertise the Property;

(e) To use and to permit others to use easements through the Common Areas as may be reasonably necessary for construction within the Property, and for the purpose of discharging Declarant's obligations under the Act and this Declaration;

(f) To appoint or remove any officer of the Association or a member of the Board of Directors during the Period of Declarant Control subject to the provisions of Paragraph 4.7 of this Declaration;

(g) To merge or consolidate the Property with another Property or subject it to a Master Association;

(h) To amend the Declaration in connection with the exercise of any Declarant Rights;

(i) To exercise any other Declarant Rights created by any other provisions of this Declaration.

11.2 Rights Transferable. Any Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights transferred and recorded in Mesa County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

11.3 Limitations. The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such Declarant Rights shall terminate without further act or deed five years after recording of this Declaration. Earlier termination of certain rights may occur by statute.

11.4 Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Declarant Rights without the prior written consent of the Declarant.

11.5 Use by Declarant. The exercise of any Declarant Right by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Lot by any Owner nor the access, enjoyment or use of the Common Areas; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

11.6 Models, Sales Offices and Management Offices. Subject to the limitation set forth in Paragraph 11.3 hereof, the Declarant, its duly authorized agents, representatives and employees may maintain any Lot owned by the Declarant or any portion of the Common Areas as a model resident, sales, leasing and/or management office.

11.7 Declarant's Easements. The Declarant reserves the right to perform warranty work, and repairs and construction work on Lots and Common Areas, to store materials in secure areas, and to control and have the right of access to work and repair until completion. All

work may be performed by the Declarant without the consent or approval of the Board of Directors. The Declarant has an easement through the Common Areas as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising under the Act or reserve in this Article.

11.8 Signs and Marketing. The Declarant reserves the right for Declarant to post signs and displays in the Common Areas in order to promote sales of Lots. Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

11.9 Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Common Areas that has not been represented as property of the Association. The Declarant reserves the right to remove from the Property (promptly after the sale of the last Lot) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

ARTICLE TWELVE: ELIGIBLE MORTGAGEE RIGHTS

12.1 Special FHLMC Provisions. Except as provided by statute in the case of a condemnation or a substantial loss to the Lots and/or Common Areas, unless at least two-thirds of the Eligible Mortgagees (based on one vote for each first mortgage owned) or Owners (other than the Declarant) have given their prior written approval, the Association may not:

- (a) change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;
- (b) partition or subdivide any Lot;
- (c) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas by act or omission.

The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this Paragraph 12.1(c).

- (d) use hazard insurance proceeds for losses to any property (whether Lots or Common Areas) for other than the repair, replacement or reconstruction of the property.

12.2 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty days after said Eligible Mortgagee receives property notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

12.3 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

ARTICLE THIRTEEN: EXPANSION

13.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to enlarge the Property in phases, without the necessity of the consent thereto or the joinder therein by the Owners or First Mortgagees, by submitting to the Property from time to time a Supplemental Declaration adding any of the real property described on Exhibit B attached hereto.

If the Property has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, any such addition, expansion or annexation must be according to a General Plan heretofore filed with and approved by the Federal Housing Administration or the Veterans Administration and such addition, expansion or annexation must be supported by the written consent of the Federal Housing Administration or the Veterans Administration, evidence of which may be recorded.

13.2 Supplemental Declaration. Such expansion must be accompanied by the filing for record by Declarant in the office of the Clerk and Recorder for Mesa County, Colorado, a supplement to this Declaration containing a legal description of the new real property. The expansion may be accompanied in stages by successive supplements or in one supplemental expansion so long as each subsequent phase is contiguous to the real property already subject to this Declaration.

All future improvements will be consistent with the initial improvements in structure type and quality of construction and must be substantially completed prior to being brought into the Property.

13.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically.

13.4 Declaration Operative on New Properties. The new real property shall be subject to all the terms and conditions of this Declaration as amended or supplemented, upon placing

a Supplemental Declaration of public record in the real estate records of Mesa County, Colorado.

13.5 Interests on Enlargement. An Owner at the time of her or her purchase of a Lot which has been brought into the Property by a Supplemental Declaration shall be a Member of the Association. Such Owner shall be entitled to the same voting privileges as those Owners of the initial property brought into the Property through the original Declaration and shall be subject to the same Assessments. The Assessments for that Phase shall commence for all Owners within that Phase including the Declarant upon the recording of the Supplemental Declaration for that Phase.

13.6 Taxes, Assessments and Other Liens. All taxes and other assessments relating to the real property described in Exhibit B covering any period of time prior to the addition of such property or any portion thereof to the Property must be paid or otherwise provided for by the Declarant to the satisfaction of all First Mortgagees.

Liens arising out of the construction of improvements in later phases shall not extend into prior phases and shall not adversely affect the rights of Owners or the priority of first mortgages and deeds of trust on any Lot constructed in a prior phase.

13.7 Project Treated as a Whole. For all purposes hereof, each of the Phases of the Property after the recording of the Supplemental Declaration submitting each Phase to the Property, shall be treated as a part of the Property developed as a whole from the beginning, except to the extent expressly otherwise provided for herein. It is the express purpose hereof to provide that from and after the date of the submission of a Phase of the Property in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single undivided Property.

13.8 Termination of the Right of Expansion. The right of expansion shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such right of expansion shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 11.3 hereof.

ARTICLE FOURTEEN: DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION

14.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 14.7 below.

14.2 Amendments by Owners. Except as permitted in Paragraph 14.5 hereof and except in cases of amendments that may be executed by the Declarant pursuant to Paragraphs 14.4 and

14.5, and except as restricted by Paragraph 13.6 hereof, this Declaration may be amended by written agreement by Owners of Lots to which at least sixty-seven percent of the votes in the Association are allocated; provided, however, except as provided in ARTICLE THIRTEEN hereof, an amendment may not create or increase Special Declarant Rights, or change the uses to which a Lot is restricted, except by unanimous consent of the Owners.

Any such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The Secretary shall further certify that originals of such written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in accordance with § 38-33.3-217(3) of the Act.

Where a Lot is owned by more than one person, the execution of any amendment shall be valid if executed by any one Owner. Signatures need not be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person.

All signatures shall be irrevocable even upon death or conveyance of the Lot, except that if an amendment is not recorded within three years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven.

14.3 FHA/VA Approval. If the Property has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, then until the termination of the Period of Declarant Control in accordance with Paragraph 4.7 hereof, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: annexation of additional properties, amendment of this Declaration and the assessment of a Special Assessment.

14.4 Amendments by Declarant. Any time within the limitations set forth in Paragraph 11.3 hereof, Declarant reserves the right to amend, without the consent of Owners or First Mortgagees this Declarations, the Association's Articles of Incorporation or Bylaws as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- (b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages.
- (c) To comply with any requirements of the Act.

14.5 CONSENT OF DECLARANT REQUIRED. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment, which consent shall be evidenced by the execution by Declarant of any certificate of amendment.

The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 11.3 hereof.

14.6 EXPENSES. All expenses associated with preparing and recording an amendment shall be allocated in accordance with § 38-33.3-217(6) of the Act.

14.7 TERMINATION. Except in the case of a taking of all of the Lots by condemnation, the Declaration may be terminated only by an agreement of Owners to which at least eighty percent of the votes in the Association are allocated, and the consent of Eligible Mortgagees representing at least eighty percent of all of the Eligible Mortgagees within the Property (based on one vote per mortgage owned), by an instrument(s) duly executed and recorded.

ARTICLE FIFTEEN: ARCHITECTURAL CONTROL

15.1 No Construction Without Approval. Except for Residences, landscaping and improvements constructed by or on behalf of the Declarant on Lots it owns, no buildings or exterior improvements of any kind, including (without limitation) driveways leading to the various structures within the Lots shall be constructed, remodeled or altered in any fashion on any Lot nor may any vegetation be altered or destroyed, nor any landscaping performed unless two complete sets of plans and specifications for such construction or alteration or landscaping are submitted to and approved by the Board, or, if the Board appoints an ACC,

the ACC, prior to the commencement of such work. All applications shall be submitted to the Board, in writing, and all decisions of the Board and ACC shall be given in writing. In the event the Board or ACC fails to take any action within thirty (30) days after complete architectural plans and specifications for such work have been submitted to it, then all of such submitted plans and specifications shall be deemed to be approved; provided, however, that the Board or the ACC may extend this deadline, with or without cause, for a period not exceeding an additional thirty (30) days, by mailing a written notice to the applying Owner within the initial thirty (30) day period. The Board and/or the ACC may adopt rules and regulations for processing of such applications which shall, upon adoption, be binding upon all subsequent applications. The number and qualifications of members of the ACC, if one is appointed, shall be as determined by resolution of the Board.

15.2 Plans. Plans and specifications submitted hereunder shall show the nature, kind, shape, height, materials, floor plans, location, exterior color scheme, alterations, grading, drainage, erosion control and all other matters necessary for the proper consideration and determination thereon. The Board or ACC shall disapprove any plans and specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Declaration.

15.3 Foundations. Plans and specifications submitted hereunder shall provide for properly engineered foundations that must be designed and stamped by a Colorado registered professional engineer. The Board or ACC shall disapprove any plans and specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Declaration.

15.4 Variances. Where circumstances such as topography, location of trees, brush, rock outcroppings, area aesthetic considerations, or other matters require or allow, the Board may, by two-thirds vote, allow reasonable variances as to any of these covenants, including required sizes of structures, setback or side yard requirements, on such terms and conditions as it shall require. Opinions of all adjoining property owners shall be considered in any such decisions. Variances must be in compliance with the approved Final Plat and Plan, as well as the City of Grand Junction Zoning and Development Code

15.5 Conformity. The Board and ACC shall exercise its best judgment to see that all improvements, structures, landscaping and all alterations on the Lot conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siding, height, topography, grade, drainage, erosion control and finished ground elevations.

15.6 Diligence. After approval of any plan in accordance with this Article, the same shall be completed with due diligence in conformity with conditions of approval, if any. Failure to adhere to any term of approval shall operate automatically to revoke the approval, and the

Board and ACC may require the property to be restored as nearly as possible to its previous state. The time for completion of any such work may be extended by the ACC.

15.7 No Liability. The Board, the ACC, the Declarant, or any Owner shall not be liable in damages to any person, corporation or association submitting any plans and specifications or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and specifications. Any Owner submitting or causing to be submitted any plans and specifications to the ACC agrees and covenants that he will not bring any such action or suit to recover damages against the Board or the ACC, the Declarant or any Owner, individually or collectively, or its members, advisors, employees or agents.

ARTICLE SIXTEEN: GENERAL PROVISIONS

16.1 RIGHT OF ACTION. The Association and any aggrieved Owner shall have an appropriate right of action against Owners for failure to comply with the Declaration, Bylaws of the Association, Articles of Incorporation and Rules and Regulations of the Association or with decisions of the Board of Directors of the Association which are made pursuant thereto. Owners shall have a similar right of action against the Association.

16.2 SUCCESSORS AND ASSIGNS. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

16.3 SEVERABILITY. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision has never been included herein.

16.4 NO WAIVER. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

16.5 REGISTRATION BY OWNER OF MAILING ADDRESS. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed, in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by

My commission expires: 1/22/2000

Susan J. Armour
Notary Public



EXHIBIT A

All of the REPLAT OF FOUNTAINHEAD SUBDIVISION, EXCEPT LOT 1, BLOCK 3,
as recorded July 6, 1983 in Plat Book 13 at Pages 177-188;
EXCEPT all of Blocks 3, 7 and 8 thereof;
AND EXCEPT all Dedicated Public Streets, Roads and Utility easements as shown on the
plat of said subdivision;
AND EXCEPT Lots "A" and "B" and the Open Space of MINI 'COVE' II SUBDIVISION;
EXCEPT Lots 1C and 1D of REPLAT OF MINI "COVE" II SUBDIVISION.
EXCEPT THE HELM AT FOUNTAINHEAD, A REPLAT OF TRACT B AND BLOCK
3 OF "THE COVE AT FOUNTAINHEAD".
AND EXCEPT THE COVE AT FOUNTAINHEAD, A REPLAT OF A PORTION OF
THE REPLAT OF FOUNTAINHEAD SUBDIVISION, EXCEPT LOT 1 BLOCK 3.

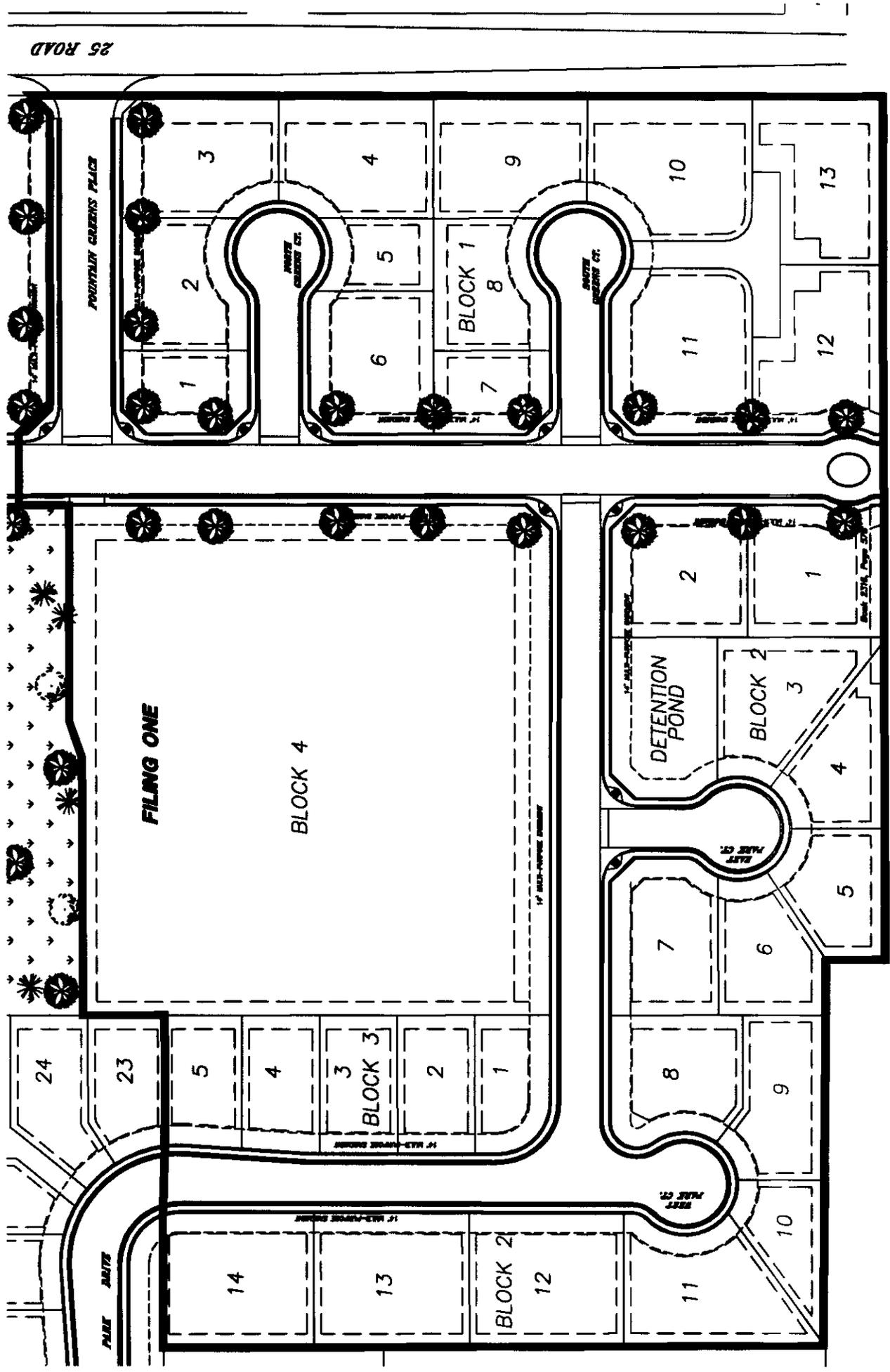


EXHIBIT B

ALL TREES SHOWN ARE MARSHALL SEEDLESS ASH
 MINIMUM SIZE, 1-1/2" CALIPER