

24 PAGE DOCUMENT

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR WINE VALLEY ESTATES**

THIS DECLARATION is made and declared this 6<sup>th</sup> day of Nov, 2006, by **Wine Valley Development, LLC**, a Colorado limited liability company, and **Robert J. Licata**, hereinafter collectively referred to as "Declarant."

RECITALS

A. Declarant is the owner of certain real property situate in Mesa County, Colorado, known and described on the Plat attached hereto as Exhibit A and incorporated herein by this reference (hereinafter referred to as the "Properties");

B. Declarant desires to develop and improve the Properties as a planned community as defined in section 38-33.3-103(22), C.R.S., and subject the same to the covenants, conditions and restrictions hereinafter set forth.

C. This Declaration has been reviewed and approved by Town of Palisade (the Town). However, all alterations of the Properties must comply with the Town's zoning and subdivision requirements, and conditions of approval by the governing municipality, if any.

NOW, THEREFORE, Declarant hereby makes the following declaration of covenants, conditions and restrictions:

ARTICLE I  
DEFINITIONS

1.1 "The Act" shall mean and refer to the Colorado Common Interest Ownership Act, Colorado Revised Statutes, Title 38, Article 33.3, as the same may exist on the date that these Covenants are recorded, and as the same may be amended from time to time hereafter, or any statute of similar effect.

1.2 "Allocated Interests" shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in Sections 4.3.B. and 5.2 of this Declaration.

1.3 "Architectural Control Committee" shall mean and refer to the Architectural Control Committee (ACC) referred to in Section 4.6 of this Declaration.

1.4 "Articles" shall mean and refer to the Articles of Incorporation of Wine Valley Estates Homeowners Association, Inc.

1.5 "Association" shall mean and refer to Wine Valley Estates Homeowners Association, Inc., a Colorado nonprofit corporation, formed for the purpose of being and constituting the entity for the furtherance of the interests of the Owners of property in Wine Valley Estates and enforcing the restrictions set forth in this Declaration.

1.6 "Association Water" shall mean and refer to all water of the Palisade Irrigation District appurtenant to the "Property" and any other water or water right, ditch or ditch rights acquired by the Association.

1.7 "Board" shall mean and refer to the Board of Directors of the Association.

1.8 "Building" shall mean and refer to any Building, including all fixtures and improvements thereto, situate on the Properties.

1.9 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.10 "Common Elements" shall mean and refer to that portion of the Properties, including any Improvements thereto, to be owned by the Association, described on the Plat as Tracts A, B, C, and E. Tract D is to be dedicated to the Town. The Association may revoke that right and privilege at any time if it determines that such use is not in the best interests of the Association or its members.

1.11 "Declarant" shall mean and refer collectively to **Wine Valley Development, LLC, and Robert J. Licata.**

1.12 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.13 "Development Rights" shall mean and refer to any right or combination of rights reserved by Declarant as set forth in Article VI of the Declaration.

1.14 "Improvements" shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, irrigation facilities such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Properties.

1.15 "Lot" shall mean and refer to that part of the Properties owned in fee simple by the Owners. The boundaries of each Lot, and an identifying number for each Lot, are reflected on the map attached hereto as Exhibit A.

1.16 "Member" shall mean and refer to a person or entity which is a member of the Association.

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

1.18 "Plat" shall mean and refer to that certain plat of the Properties to be recorded in the Mesa County Clerk and Recorder's official records.

1.19 "Properties" shall mean and refer to all of the real estate situate within the area described in Exhibit A, known as Wine Valley Estates Subdivision.

## ARTICLE II GENERAL DECLARATION

2.1 Intent. By making the Declaration hereunder, Declarant specifically intends to enhance, perfect and preserve the value, desirability and attractiveness of the Properties and to provide for the maintenance of the Common Elements, Improvements and Buildings thereon in a manner beneficial to all Owners.

2.2 Estate Subject to Declaration. By this Declaration, Declarant expressly intends and does hereby subject the Properties to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

2.3 Owners' Rights to Common Elements. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration and the Articles and Bylaws of the Association. Any Owner may delegate his right of enjoyment to the Common Elements and facilities for the members of his family, tenants, guests, invitees or contract purchasers.

2.4 Recording Data. The recorded easements and licenses appurtenant to, or included in, the Properties, or to which any portion of the Properties may become subject by virtue of a reservation herein will be found on the Plat to be recorded in the Mesa County Clerk and Recorder's Records. These easements include, but are not limited to, a temporary construction ingress and egress easement, irrigation water access easements, utility easements and multipurpose easements.

2.5 Maximum Number of Lots. Declarant reserves the right to create a maximum of thirty-four (34) Lots on the Properties.

### ARTICLE III RESTRICTIONS ON USE

3.1 Building Restrictions.

A. Multi-level structures must be approved in writing by the Declarant or the Architectural Control Committee and shall contain no less than a total of one thousand six hundred (1,600) square feet floor area, with a main floor of no less than one thousand one hundred (1,100) square feet, exclusive of open porches, open patios or garages, and shall be subject to approval of the Architectural Control Committee.

B. Single family structures and patio-home structures and attached structures shall contain no less than thirteen hundred (1,300) square feet floor area, exclusive of open porches, open patios and garages, and shall be subject to approval of the Architectural Control Committee.

C. No home or other structure shall have a basement.

D. All homes shall have stucco exteriors. Brick or stone accents may be allowed subject to the approval of the Architectural Control Committee.

E. All homes shall have an eave height of a minimum of nine feet (9') above top of finished first floor height.

F. The top of all concrete foundations shall meet the criteria of the Mesa County Building Department.

G. All roof materials are subject to the approval of the Architectural Control Committee, provided, however, that the Architectural Control Committee may not require the use of flammable roofing materials as provided by the Act.

H. Exterior siding shall be wood, masonry or stucco or a combination thereof. The use of four (4) by eight (8) foot sheeting is permitted. Log and log siding is permitted. No bright colors or garish colors are permitted on the exterior of any structure in the Subdivision. Samples of materials and color strips are to be included at the time of plan submittal for Architectural Control Committee review. Any variance must be approved by the Committee. All exterior building materials used must be approved by the Architectural Control Committee.

I. A majority vote of the Architectural Control Committee is required for approval or denial of all proposed improvements.

J. All principal Buildings shall have a two (2) car garage or greater and shall consist of a minimum of four hundred eighty (480) square feet. The third bay of any three-car garage shall be offset at least two (2) feet from the other garage bays, with a minimum of a twenty-five (25) foot driveway measured from the back of the sidewalk.

K. Roof pitch for all residences shall have at least a 4/12 pitch and have multiple gables and/or hips. No four-sided tract-style homes shall be allowed. Multiple roof elevations and more than four corners to the house shall be required.

L. Once the construction of the home has begun, construction of the home must be completed and a certificate of occupancy must be obtained within six (6) months.

M. All roof maintained evaporative coolers shall be located over the rear portion of the dwelling and shall be mounted so the top portion of the cooler is not visible from the street. The Architectural Control Committee may grant a variance where such requirements cannot be met due to technical constraints. Ground mount air conditioning units are allowed, if the location has been approved by the Architectural Control Committee.

N. No metal storage sheds allowed. Storage sheds shall be the same color as the residence.

O. All gas and electrical meters and utility panels shall be located at least three (3) feet back from the front corners of the principle dwelling building.

P. All down-spots on structures shall direct water away from neighboring properties toward run-off grades, as possible, as approved by the Architectural Control Committee

Q. The Properties are located in Mesa County within the Town of Palisade and are zoned R1 as set forth in the Town of Palisade Zoning Ordinance. All Buildings shall meet or exceed Town of Palisade setback standards and requirements. No structure of a temporary character, trailer, teepee, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

R. An Owner shall not change, modify, paint, decorate, alter or in any way make any change to any exterior wall, surface, roof, deck, patio, entry, landscaping, paving, trees, shrubbery or other Improvements without the approval of the Architectural Control Committee.

S. Outbuildings shall be constructed of the same materials and exterior finishes as the primary structure and shall resemble the primary structure in architectural style. Location of outbuildings shall be to the rear of the primary structure and shall be subject to the same setbacks as the primary structure. No outbuildings shall be constructed prior to written approval from the Architectural Control Committee as to location, size, use and materials.

### 3.2 Maintenance of Lots, Buildings, Improvements and Common Elements.

A. The Owners shall keep, maintain and repair their Lots, Buildings and Improvements, including landscaping and vegetation in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration. In the event the Owners fail to keep, maintain or repair their Lots, Buildings or Improvements in accordance herewith, the Association shall conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner(s) on whose Lot, Building or Improvements the maintenance or repairs were conducted as a reimbursement assessment pursuant to Section 5.4 hereof. The Association or Declarant, upon the failure of the Owner of any Lot, to maintain his/her Lot and Improvements,

including the payment of any taxes assessed thereon, in a reasonable satisfactory manner as determined by the Association, or upon use by the Owner in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the Lot and/or Improvements, or abate the improper use, or pay the taxes thereon, and any costs incurred shall be charged against the Owner of said Lot and collected in the manner set forth in Article V hereof.

B. The Owners shall not cause or permit any damage, deterioration or the accumulation of trash and debris upon the Common Elements.

C. The Common Elements shall be owned by the Association and shall remain undivided. By the acceptance of his or her deed or other instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Owner agrees not to institute any action therefor. Furthermore, each Owner agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the complying Owner to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the complying Owner incurs in connection therewith. Further, all Owners covenant that they shall neither by act nor omission seek to abandon, subdivide, encumber, sell or transfer the Common Elements except pursuant to the provisions of the Act pertaining to the sale, conveyance or encumbrance of Common Elements..

D. Each Owner shall be entitled to exclusive ownership of his or her Lot. Each Owner may use the Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

E. No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate on any Lot or the Common Elements. All garbage, rubbish and trash shall be placed and kept in covered containers. All containers shall be kept within garages or enclosed backyards so as to not be visible from neighboring property, except to make the same available for collection during regular trash collection days, and then only for a period of from 7:00 A.M. through 8:00 P.M. on such trash collection day.

F. No elevated tanks of any kind, including but not exclusively oil, gas, and water tanks, shall be permitted.

G. Driveways shall be surfaced with a hard surface such as concrete.

3.3 Home Occupations and Offensive Activities.

A. No Lot or Building may be used for commercial purposes of any type whatsoever excepting for home occupations as permitted by the Town of Palisade or the governing entity. For purposes of this section, "home occupations" shall mean an occupation by the resident conducted entirely within the residential building which does not entail the employment of third persons on the premises, does not entail the delivery of goods or services to customers upon the premises, and does not entail visits by customers to the premises. For example, but not by limitation, an insurance agent may use his residence as a personal office so long as his customers are not permitted to come to the residence; however, the establishment of a barber shop or a beauty shop would be prohibited.

B. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his own vehicle.

C. No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Properties.

3.4 Restrictions on Occupants and Pets.

A. At no time shall any single family residence be occupied by more than one family.

B. No animals shall be allowed other than domestic pets. Not more than three (3) pets in cumulative total shall be kept on the premises and only then if they are kept solely as household pets for private use and not for commercial purposes. No such animal may be kept which is a nuisance or annoyance to other Owners' property. Household pets shall be contained on their Owner's property or on a leash and not permitted to run loose. At the request of any Owner, the Board of the Association shall determine whether a particular animal shall be considered a household or yard pet, a nuisance, or whether the number of any such animals on any Lot is in compliance. Vicious dogs, vicious breeds of dogs, and habitually barking dogs are prohibited in the sole discretion of the Association and without reference to the results of any temperament or other behavioral examination or test. Household pets shall be kept and raised only for

private use and not for commercial purposes. No horses or livestock of any type shall be kept on any Lot. Household pets shall be under the control of their owners at all times.

3.5 Parking.

A. All residences shall be constructed so as to provide sufficient off street parking to accommodate not less than four automobiles.

B. No Lot roadway or easement shall be used as a parking, storage or accommodation area for any type of junk vehicles or vehicles under repair. Only those cars and trucks incidental to residential family use will be permitted within the Properties except that emergency and other vehicles shall be permitted to park in accordance with state, local, or other applicable law. Recreational vehicles shall be screened by fences, plantings or otherwise kept from public view. Fences approved by the Architectural Control Committee per the guidelines of Section 3.8 shall be deemed to meet this requirement.

C. No vehicles, boats, campers, trailers, snowmobiles, motorcycles or other recreational vehicles, devices or equipment, or vehicles used for business (other than normal passenger-type vehicles) shall be stored or permitted to remain on the premises unless garaged, placed in an Architectural Control Committee-approved outbuilding or screened storage facility, and parked no closer to the front line of the Lot than the Building on the Lot which is closest to the front line of the Lot.

3.6 Landscaping.

A. During the course of construction, all precautions shall be taken to provide for a minimum disturbance of the land. To preserve and enhance the neat character of the Properties, native landscaping is encouraged.

B. Each Owner shall grade, landscape and plant those portions of their Lot not graded, landscaped or planted on the date such Lot was first conveyed to the Owner by Declarant within twelve (12) months after completion of construction of any Building on the Lot. All grading, landscaping and planting performed or conducted by the Owner shall be first approved by the Architectural Control Committee, and once installed in accordance with the approval of the Architectural Control Committee shall not be changed from its appearance. All vegetation shall be properly cultivated (including watering) and neatly trimmed, garbage and weed free at all times. All Lots require landscaping maintenance. Should the Owner of any Lot fail to comply with landscaping

guidelines as set forth herein, the Association may, at its sole discretion, cause such landscaping to be completed upon subject Lot and assess the Owner for all costs incurred.

C. No Owner shall remove, alter, injure or interfere in any way whatsoever with any tree, shrub or other landscaping or Improvement placed upon the Properties by Declarant or the Association except pursuant to authority granted by state, local or other relevant law.

D. No tree, shrub or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or the Plat such as to hinder, or interfere with the purposes for which such easement was created.

E. All gravel landscaping is prohibited in the front yards of Buildings and all front yards must have at least one (1) tree.

3.7 Signs. Signs, including, but not limited to political campaign signs, shall be permitted upon the properties in such manner, at such times, and with such limitations as are imposed by state, local or other applicable law. Unless so permitted, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than four (4) square feet, a sign of not more than five (5) square feet advertising the Lot for sale or rent, or signs used and erected by a builder to advertise the Property during the period when construction and sales of any dwelling occur. Signs on the Common Elements are governed by the Association.

3.8 Fences. To preserve the open nature and to maintain the scenic views for the benefit of all Owners, no fence shall be erected on a Lot without the approval of the Architectural Control Committee. All fences, foliage, trees or hedges in the nature of a fence shall be planted, maintained, constructed or erected in compliance with local zoning, building, or other codes or regulations governing fence height and location. Fences must be installed no later than one (1) year after building completion. All fencing design and material must be approved by the Architectural Control Committee.

3.9 Miscellaneous.

A. No Lot shall be used in any manner whatsoever to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances or other mineral of any type.

B. All facilities for permanent utilities service shall be kept or maintained underground, or in the original condition at such time the Lot and Improvements thereupon are first conveyed to the Owner by Declarant.

C. No hunting, shooting, trapping or harming of wildlife shall be permitted, it being the intent to conserve and protect all wildlife to the utmost.

D. No recreational vehicles, motorcycles, dirt bikes, off-road vehicles, etc. shall be operated in the development at any time except for ingress and egress to and from the development and upon established roads.

3.10 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents and contractors of improvements, structures or signs necessary or convenient to the development, sale, operation or other disposition of the Lots or Improvements situate within the Properties, provided that this exemption shall not be interpreted to impose limitations on the power of the Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

#### ARTICLE IV THE ASSOCIATION

4.1 Purpose and Membership. By acceptance of a deed to a Lot, each Owner shall be a member of the Association, which is a Colorado nonprofit corporation, organized for the general purpose of being and constituting an entity for the furtherance of the mutual interests of the Owners of the Properties pursuant to this Declaration and the Articles and Bylaws, including without limitation, enforcement of the Declaration; owning, repairing and maintaining the Common Elements; maintenance and use of any Lots, Buildings and Improvements; levying and enforcing assessments to defray the cost and expenses of operation; and, providing other utilities and services pursuant to the Articles and Bylaws. This is a common interest community as defined by the Act. The business of the Association will be conducted according to the Act.

4.2 Directors of the Association. The affairs of this Association shall be managed by a board of three (3) Directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 4.3.C., below, the Board shall be managed by at least three (3) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

4.3 Voting Rights.

A. A membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

B. The Association shall have one class of voting membership, each Owner being entitled to vote one vote for each Lot owned upon matters subject to vote by the Members as provided in the Articles and Bylaws of the Association. A vote for each Lot shall be exercised as the Owner determines, but in no event shall more than one vote be cast with respect to any Lot.

C. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant or two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board must be elected by Owners other than Declarant. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in section 38-33.3-303(9), C.R.S.

4.4 Limitation Upon Liability. Notwithstanding the duty of the Association to maintain and repair parts of the Properties, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Properties or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

4.5 Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance, to the extent reasonably available, commencing not later than the time of the first conveyance of a Lot to an Owner other than the Declarant:

A. Property insurance on the Common Elements and also on property that may become a Common Element for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

B. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, in an amount, deemed sufficient in the judgment of the Board, but in any event not less than the amount, if any, specified in this Declaration, insuring the Board, the Association, the managing agent, if any, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board Member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

C. Insurance policies carried pursuant to both immediately preceding subsections of Section 4.5 must provide that:

(1) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(2) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

(3) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

D. Workers' Compensation coverage upon employees.

E. Such other insurance as the Board may deem desirable for the benefit of the Owners.

4.6 Architectural Control Committee.

A. No Building or exterior Improvement of any kind shall be erected, placed or altered on any Lot until the construction plans and specifications, and a plan showing the location of the structure or Improvement, have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finished grade elevation all to be in conformity with this Declaration, including, but not limited to, the requirements set forth in Section 3.1.

B. The Architectural Control Committee shall consist of three (3) persons to be appointed by the majority of the Board. The method and manner of the Architectural Control Committee's appointment, replacement and removal, as well as method of operation, to the extent not provided herein, shall be as set forth in the Articles and Bylaws of the Association.

C. No Improvement, including Owners' landscapings, shall be installed, erected or altered within the Properties except upon the prior written consent and approval of the Architectural Control Committee.

D. Duplicate copies of plans and specifications relating to an Improvement shall be submitted to the Architectural Control Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and a perspective sketch if requested, and other details necessary to explain any feature or component of the Improvements.

E. The Architectural Control Committee's approval or disapproval as required in this Declaration shall be in writing. In the event the Architectural Control Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after sufficient plans and specifications have been submitted to it, approval will not be required, and the related covenants shall be deemed to have been fully complied with.

Two complete sets of finished plans and specifications for construction shall be submitted at time of application, one copy of which will be retained by the Architectural Control Committee for its records. Approval or disapproval as required in this Declaration shall be determined by majority vote of the members of the Architectural Control Committee.

F. The Architectural Control Committee and the members thereof shall make decisions concerning the approval or denial of an Owner's application for architectural review in accordance with the standards and procedures set forth in this Declaration, or in duly adopted rules, regulations, policies or procedures, and shall not be made arbitrarily or capriciously. Notwithstanding the foregoing, the Architectural Control Committee and the members thereof shall not be liable for damage to any person submitting requests for approval or to any Owner within the Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request to the fullest extent permitted by law. The actions of the Architectural Control Committee shall be deemed conclusively binding upon the Owners.

G. Neither the members of the Architectural Control Committee, nor such representatives as it may designate, shall be entitled to any compensation for services performed pursuant to this Declaration.

H. In addition to all the other criteria herein set forth, the Architectural Control Committee shall generally determine whether the proposed Improvement will protect the then value and future values of the Properties then located in the Subdivision and to be erected therein. The Architectural Control Committee shall, in the exercise of its judgment and determination, use reason and good faith. Among the other considerations applied, the Architectural Control Committee will determine and base its approval or rejection upon the fact of whether said proposed Improvements are reasonably compatible with other Improvements erected and planned in the Properties. The Architectural Control Committee shall evaluate the proposed construction as to location of the Property, harmony of exterior design, materials and colors with existing dwellings and surroundings, finished grade evaluation and other criteria as it deems necessary for the purposes set forth in this paragraph.

#### 4.7 Ownership and Maintenance.

A. The ownership, maintenance, repair and restoration of the Common Elements, together with Improvements thereon, shall be vested solely in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing and restoring the Common Elements and Improvements thereon shall be borne by the Owners as a regular assessment as provided in Section 5.2, hereof.

B. The Association shall further be charged with the maintenance, repair and restoration to any Improvement situate on any Lot provided the Owner thereof fails to repair, restore or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Section 5.4, hereof.

4.8 Association Water.

A. All irrigation water to be furnished to the Properties shall be furnished by the Association. Water rights running with the Properties will be conveyed to the Association by the Declarant prior to the sale of any Lot by the Declarant. All Owners of Lots with lawns shall be required to install sprinkler systems to maintain their lawns. The Association shall have the right to limit the use of irrigation water as it determines in its sole discretion to the Lots and Common Elements and may institute and enforce rules regarding which days irrigation water may be used for any given Lot.

B. The irrigation facilities to be owned by the Association shall consist of an irrigation pump, pump house, a system of pipes and pipelines as to provide irrigation water to the Common Elements and all Lots. The irrigation facilities, including any easements in connection therewith, shall be solely owned, operated and maintained by the Association.

C. The Declarant shall construct the irrigation facilities described in Section 4.8(B), above, and, upon inspection and approval by the Town Engineer for the Town of Palisade, transfer ownership of the same to the Association prior to the sale of any Lot by the Declarant. It shall be the obligation of the Association to own, operate, maintain and repair the irrigation facilities for the distribution of water to the Common Elements and all Lots. Owners shall be responsible for operation and maintenance and repair of the sprinkler system installed on their lot.

D. The Association shall have an easement across all Common Elements and Lots as reasonably necessary to operate, maintain, and repair the irrigation facilities.

4.9 Duty of Association. The Association shall have the duty of maintaining and repairing all of the Common Elements within the Properties. The cost of all such maintenance shall be a common expense to all of the Owners. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

4.10 Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and the Articles of Incorporation and Amendments, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.

- A. Maintenance, repair and restoration of the Common Elements, except only as otherwise provided.
- B. The obtaining and maintaining of all required insurance as provided herein.
- C. Collection of assessments for irrigation water and maintenance and repair of the irrigation system.

#### ARTICLE V ASSESSMENTS

5.1 Owner's Obligation. By accepting a deed to any Lot, each Owner agrees to pay to the Association all the assessments, to be fixed and levied from time to time as provided in the Declaration, the Articles and Bylaws. Such assessments, together with interest accruing thereon and the costs of collection in the event of a delinquency of payment, shall be the personal obligation of the person who is the Owner, or the persons who are jointly and severally the Owner, at the time the assessment was made.

5.2 Regular Assessments.

A. At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the cost and expenses to be incurred by the Association during such fiscal year in performing its functions, and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such fiscal year which is attributable to the operation and maintenance assessments for the prior fiscal year. The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the Common Elements, which sums may include, among other things, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, legal and accounting fees, management fees, expenses and liabilities incurred by the Association

under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Subject to Section 5.2.B. hereof, the sum or net estimate so determined shall be assessed to the Owners as an operation and maintenance assessment by dividing the total estimate by the total number of single family residential Lots and assessing the resulting amount to the Owner of each Lot. Assessments shall be paid in one (1) annual installment due on or before the 10th day of each January, unless the Board resolves to collect assessments in periodic installment payments.

B. Within ten (10) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

5.3 Special Assessments. If at any time during the fiscal year the regular assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy, following the procedures outlined in Section 5.2(B), above. The special assessment shall be assessed to the Owners by dividing the total estimate by the total number of residential Lots and assessing the resulting amount to the Owner of each Lot, such assessment to be paid either in equal monthly installments over the balance of the remaining fiscal year, or in a lump sum upon billing as the Board shall determine.

5.4 Reimbursement Assessment. The Board may levy an assessment against any Owner as a result of such Owner's failure to landscape his Lot, including a sprinkler system, rebuild damaged Improvements or to restore or maintain his Lot or the Improvements situate thereon. Such assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses incurred for the repair, maintenance or restoration of such Owner's Lot or Improvements, and shall be due and payable to the Association when levied.

5.5 Reserve Fund. The Association may establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through annual payments of the common assessments and

shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

5.6 Capital Improvements. In addition to regular and special assessments, the Association may levy, in any assessment year, a special assessment for the purposes of defraying in whole or in part the cost of any capital Improvement upon the Common Elements, including fixtures, landscaping or personal property related thereto, provided that such assessment shall have the assent of a majority of the members of the Association subject to the assessment. Capital Improvement assessments shall be levied in accordance with the procedures outlined in Section 5.2(B), above.

5.7 Enforcement. In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

A. The Association may elect to accelerate and declare immediately due and payable the remaining balance of any regular or special assessments for such fiscal year which the Board has resolved should be collected in periodic installment payments.

B. The Association may bring a suit at law to collect the delinquent assessments, including any accelerated assessment. Any judgment rendered in such action shall include a sum for costs of suit, including a reasonable attorney's fees.

C. All delinquent assessments shall be a lien on the Owner's Lot to which the provisions of section 38-33.3-316, C.R.S., shall apply.

D. Beginning with second month of delinquency, interest will be charged at a rate of twenty-one percent (21%) per annum on all delinquent amounts each month until payments are current.

5.8 Out-of-State Owners Who Are Not Occupants. In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:

A. Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or

- B. Pay the regular assessment pursuant to Section 5.2 hereof in advance by the 10th day of the first month of the fiscal year; or
- C. Either or both of the immediately preceding subsections of Section 5.8 hereof.

ARTICLE VI  
RESERVATION OF DEVELOPMENT AND ADDITIONAL RESERVED RIGHTS

6.1 Easements. Easements for installation and maintenance of utilities, drainage facilities and irrigation water are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow, obstruct or retard the flow of water in and through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except those Improvements for which a public authority or one or more utility companies is responsible.

6.2 Use for Sales Purposes. Declarant reserves the right, for itself and its successors and assigns, to maintain sales offices, management offices, and models on any part of the Properties. At the time the Declarant, or its successors or assigns, should cease to be an Owner, as defined herein, the rights reserved by this section shall terminate, except that the Declarant shall have the right to promptly remove any sales office, management office, or model.

6.3 Construction Easement. Declarant expressly reserves the right to perform warranty work and repairs and construction work and to store materials in secure areas, on Lots and Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Owner or mortgagee. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the property. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an improvement containing Lots. If Declarant grants any such easements, the Declaration will be amended to include reference to the recorded easement.

6.4 Reciprocal Easements. If all or part of the Property is not submitted to this Declaration, or if property is withdrawn from the Wine Valley Estates project ("Withdrawn Property"):

A. The Owner(s) of the Development Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Wine Valley Estates; and

B. The Owner(s) in the Wine Valley Estates project shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Development Property and Withdrawn Property.

Declarant shall prepare and record in the office of the clerk and recorder of Mesa County whatever documents are necessary to evidence such easements and shall amend the Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the Owners of the Property and the Withdrawn Property and the Owners in the Wine Valley Estates project shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this section.

6.5 Termination of Development Rights. Any Development Rights or Additional Reserved Rights reserved to Declarant, for itself, its successors and assigns, shall expire ten (10) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law, or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of such rights by Declarant.

6.6 Transfer of Development Rights Any Development Right or Additional Reserved Right created or reserved under this article for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in every county in which any portion of the project is located. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE VII  
CASUALTY, DAMAGE AND REPLACEMENT OF IMPROVEMENTS

7.1 Owner's Insurance. All Owners shall keep and maintain fire and casualty insurance upon all Improvements situate on their Lots to the full insurable value thereof, and file the certificate of insurance with the President of the Association, such certificate providing for ten (10) days' written notice of cancellation, surrender or modification.

7.2 Loss, Damage or Destruction of Improvements Other Than Buildings. In the event of a loss, destruction or damage to any Improvements situate on any Owner's Lot exclusive of the residential building, such Owner shall, after first obtaining the approval of the Architectural Control Committee, replace, repair or restore such damaged Improvement with an identical Improvement as to the one destroyed, lost or damaged. In the event an Owner fails to make such repair, replacement or restoration within ninety (90) days of the loss, damage or destruction, the Association shall have the option to make such repair, restoration or replacement and charge the cost thereof to the Owner as a reimbursement assessment.

In the event of loss, damage or destruction of any Improvement situate upon the Common Elements, the Association shall within ninety (90) days of such loss, damage or destruction, replace, repair or restore such Improvement with an identical Improvement.

7.3 Loss, Damage or Destruction to Buildings. In the event of loss, damage or destruction of any residential building, the Owner thereof shall repair, restore or rebuild the same within one year following such damage or destruction. The new structure shall be rebuilt in the same location, following the same floor plan and elevation and using the same exterior materials and stain as the building which had been lost, damaged or destroyed. It is the specific intent of this section to impose upon the Owner of each Lot, the obligation to replace any destroyed building with a new building having the identical appearance as the building destroyed and the other residences within the Properties. Further, following completion of the repair, restoration or replacement of the damaged structure, the Owner shall repair, replace or restore any landscaping or other Improvements involved in the damage, destruction or loss to the residents within ninety (90) days of completion of the structure. However, in the event completion is after September 1st of any year, landscaping shall be completed by May 1st of the following calendar year.

ARTICLE VIII  
STREET LIGHTING

8.1 Street Lighting. Wine Valley Estates is subject to the terms and provisions of an unconditional restrictive covenant which provides in substance that present and subsequent owners of property in the area proposed to be served are subject to and bound by present and future Xcel Energy of Colorado tariffs applicable to street lighting service filed with the Public Utilities Commission of the State of Colorado.

ARTICLE IX  
GENERAL PROVISIONS AND MISCELLANEOUS

9.1 Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

9.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

9.3 Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration shall only be amended by vote or agreement of Owners of Lots to which at least sixty-seven (67%) of the votes in the Association are allocated. Any amendment must be recorded.

9.4 Limitation on Association. Any action, resolution or attempted action of the Association in conflict with any term or provision of this Declaration shall be void and of no force and effect whatsoever.

9.5 Notice. Notice of matters affecting Wine Valley Estates may be given to Owners by mailing such notice by first class mail to the last address provided by the Owner to the Association. If no address has been provided by Owner, such notice shall be mailed to the address of Owner's Lot.



**WINE VALLEY ESTATES  
HOMEOWNERS ASSOCIATION, INC.**

The following additional provisions are included in the Articles of Incorporation of Wine Valley Estates Homeowners Association, Inc. (the Association) as their integral part:

ARTICLE I  
PURPOSE

The Association shall be a nonprofit corporation and shall be and constitute the Association described in that certain Declaration for Wine Valley Estates Subdivision, (Declaration), recorded or to be recorded in the office of the Mesa County, Colorado Clerk and Recorder, as the Declaration may be amended from time to time. The Declaration is incorporated herein as if fully set forth in these Articles. Any terms defined in the Declaration shall have the same meaning when used in these Articles.

ARTICLE II  
MEMBERSHIP

The Association shall be a membership corporation. The members shall be the Owners of Lots in the Subdivision, according to the allocation of memberships defined and provided in the Declaration.

ARTICLE III  
VOTING RIGHTS

The members shall have one (1) vote for each membership allocated to the Lots under the Declaration.

ARTICLE IV  
DISSOLUTION

The Association's assets shall be distributed upon dissolution in accordance with section 7-134-101, et seq., C.R.S., or the successor statutes in effect at the time of dissolution.

ARTICLE VI  
LIABILITY

There shall be no personal liability, either direct or indirect, of any director or officer of the Association to the Association or its members, for monetary damages for any breach of fiduciary duty as a director or officer to the fullest extent permitted by law. This provision is effective on the date of incorporation of the Association, and shall not eliminate or limit the liability of a director or officer to the Association or to its members for monetary damages for any act or omission occurring prior to such date. However, this provision shall not limit the rights of directors or officers of the Association for indemnification or other assistance from the Association, and the Association shall provide indemnification either directly or indirectly through insurance policies or otherwise, to the fullest extent permitted by law, for any person who serves as a director, officer, employee or agent of the Association against liabilities and expenses such person incurs in connection with holding such position. Also, this provision shall not restrict or otherwise diminish the provisions of section 13-21-116(2)(b), C.R.S., as amended, or any other law that would limit or eliminate liabilities. Any repeal or modification of this Article by the members, or any repeal or modification of the provisions of the Colorado Revised Nonprofit Corporation Act which permits the limitation or elimination of liability of directors or officers, shall not adversely affect any elimination of liability, or any right or protection, for any breach, act, omission or transaction that occurred prior to the time of such repeal or modification.