

## MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF COPPER CREEK WEST

This Master Declaration of Covenants, Conditions and Restrictions of Copper Creek West (“Declaration”) is made this 4th day of April 2024 by North 25, LLC, a Colorado limited liability company.

### RECITALS

A. Declarant is the owner of certain real property in Mesa County, Colorado, more particularly described on the attached **Exhibit A** (“Initial Property”).

B. Declarant is also the owner of certain other real property in Mesa County, Colorado, more particularly described on the attached **Exhibit B** (the “Annexable Property”).

C. Declarant desires to submit the Initial Property to the covenants, terms, and provisions of this Declaration, and to create a planned community in and on the Initial Property subject to and in accordance with the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.*, as amended from time to time (the “Act”) called “Copper Creek West” (the “Community”).

D. Declarant reserves the right, but shall have no obligation, to annex to the Community some or all of the Annexable Property and/or additional unspecified real estate, and to develop such property as a part of the Community, as more fully provided in this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the Community, as hereinafter described, with all appurtenances, facilities and Improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions.

### ARTICLE 1 DEFINITIONS

The terms used herein shall have the meanings stated in the Act, except as otherwise provided:

1.1 “Act” shall mean the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et. seq.*, as amended and supplemented.

1.2 “Allocated Interests” shall mean and refer to the common expense liability and votes in the Association as set forth in this Declaration, as it may be amended and supplemented from time to time. The formulas for the Allocated Interests are as follows:

1.2.1. *Percentage share of Common Expenses.* Each Unit shall be responsible for a percentage share of Common Expenses the numerator of which is one (1) and denominator of which shall be the total number of Units in the Community on the date of calculation.

1.2.2. *Voting.* Each Unit shall have one (1) vote in the Association.

1.2.3. *Automatic Re-Allocation.* If Units are added to or withdrawn from the Community as more fully provided in this Declaration, the Allocated Interests of each Unit shall automatically be reallocated in accordance with the formulas provided in this section.

1.3 “Articles” shall mean and refer to the Articles of Incorporation of the Association.

1.4 “Association” shall mean and refer to Copper Creek West Homeowners Association, Inc., Colorado nonprofit corporation, its successors, and assigns.

1.5 “Association Documents” means the Articles, Bylaws, Policies, Procedures, Rules and Regulations of the Association, as defined herein, as each of them may be modified from time to time.

1.6 “Association Water” shall mean the irrigation water supply allocated to the Property through Grand Valley Irrigation Company, its successors and assigns (“GVIC” ), by ownership of shares or otherwise as determined by GVIC from time to time, together with and any other water or water rights, ditch or ditch rights, or easements acquired by the Association together with all facilities, improvements, easements, or other real or personal property related to, associated with, or used in connection with any of them (including, for example, irrigation pumps, valves, filters, siphons and pipeline), which shall be a part of the Common Elements and administrated by the Association.

1.7 “Board” means the Board of Directors of the Association. Except as specified herein, or in the Articles or Bylaws or C.R.S. § 38-33.3-303(3), the Board may act on behalf of the Association without any vote or consent of the members.

1.8 “Bylaws” shall mean and refer to the Bylaws of the Association.

1.9 “Clerk” means the Clerk and Recorder of Mesa County, Colorado.

1.10 “Common Elements” means all portions of the Community in which the Association holds an interest for the common use and enjoyment of the Owners, including, without limitation, the Association Water, and those portions of the sidewalks within the Community dedicated as trail easements to the City of Fruita on any Plats or Maps. Common Elements are further divided into General Common Elements and Limited Common Elements, having the following definitions:

1.10.1. "General Common Elements" means all the Common Elements except for the Limited Common Elements.

1.10.2. "Limited Common Elements" means those Common Elements designated or reserved herein or on any Plat or Map for the exclusive use of one or more Units but fewer than all of the Units.

1.11 "Common Expenses" shall mean (i) all expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements; (ii) insurance premiums associated with the Common Elements; (iii) utilities related to the Common Elements not separately metered to specific Units; (iv) a reasonable and adequate contingency or other surplus fund for insurance deductibles and repairs and replacement of the Common Elements; (v) all expenses lawfully determined to be Common Expenses by the Board; and (vi) other costs related to the Common Elements, or Units which the Act permits to be added to an assessment, including, but not limited to, costs of collection, fines, fees, interest, and attorneys' fees.

1.12 "Community" shall mean and refer to the common interest community described herein and created on the Initial Property and such portions of the Annexable Property as may be added to Community by this Declaration and related Plat(s) and Map(s), known as Copper Creek West, which is initially a planned community as defined by the Act. Future portions of the Community may take other forms as defined by the Act.

1.13 "Declarant" shall mean and refer to North 25, LLC, a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder, in compliance with C.R.S. § 38-33.3-304.

1.14 "Declaration" means this document and as it may be amended or supplemented from time to time.

1.15 "Development Period" means that period of time which begins upon the initial recording of this Declaration with the Clerk, and ends upon the earlier of 20 years, or when all of the Units That May Be Created have been conveyed to the first Owner thereof (other than to Declarant).

1.16 "Development Rights" shall mean and refer to any right or combination of rights reserved by the Declarant in this Declaration.

1.17 "Director" shall mean and refer to one or more members of the Board elected as provided in the Bylaws.

1.18 "DRB" shall mean the design review board appointed by the Declarant or the Association as more fully provided in this Declaration to review and approve the plans for all improvements constructed on the Community.

1.19 “Eligible Mortgagee” means a First Mortgagee who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, of its name and address, and that it holds the First Mortgage on one or more Units. The notice must include the Unit number and street address of the Unit on which it has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in this Declaration.

1.20 “First Mortgage” shall mean a Mortgage upon a Unit having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). “First Mortgagee” means a Mortgagee whose encumbrance is a First Mortgage. Nothing contained in this Declaration shall prohibit a mortgagee under a single mortgage from being a “First Mortgagee” upon more than one Unit and from maintaining and exercising all First Mortgagee voting rights, approvals and/or consents with respect to each applicable Unit for which it is First Mortgagee.

1.21 “Improvements” means any and all structures and all associated facilities of any kind, including exterior architectural elements, fixtures, utility services, outlets, and related facilities, awnings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, and other facilities, such as pumps, pipes, and sprinklers, and other structures of every type and kind within the Community.

1.22 “Member” shall mean and refer to every person or entity who holds membership in the Association.

1.23 “Mortgage” means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk, and by which a Unit or any part thereof is encumbered. “Mortgage” shall also include any executory land sales contract in which the Administrator of Veterans Affairs (“Administrator”), an officer of the United States of America, is the original seller, regardless of whether such contract is recorded and regardless of whether such contract is owned by the Administrator, the Administrator’s assignee, or a subsequent assignee who has notified the Board in writing of such assignment. If the executory contract in which the Administrator is the original seller is not recorded, then written notice of the contract shall be provided to the Board.

1.24 “Officer” shall mean and refer to an officer of the Association, appointed to serve as an officer pursuant to the provisions of the Bylaws.

1.25 “Owner” means any person, corporation, partnership, association, contract seller or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Units. The term “Owner” shall further include any grantee,

transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Security Interest Holder as herein defined or other person or entity having an ownership interest in any Unit merely as security for the performance of an obligation, unless such Security Interest Holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.26 “Period of Declarant Control” shall mean that period during which the Declarant, or a person designated by Declarant, may appoint, and remove the officers and members of the Board.

1.27 “Plats or Maps” means any document that depicts all or any portion of the Community in either two or three dimensions, which includes, among other things, a description of the boundaries of each Unit and each Unit’s identifying number, is executed by a person that is authorized by the Act to execute a declaration, and is recorded in the real estate records of the Clerk, and which may be a land survey plat as provided by C.R.S. §38-51-106.

1.28 “Policies, Procedures, Rules and Regulations” means, collectively, all written terms and conditions, however denominated, that are adopted by the Association for the management, regulation, use, operation, or any other aspect of all or any part of the Community, including any amendments thereto.

1.29 “Security Interest” shall mean an interest in real estate or personal property constituting, attached to, or located on the Community, or any portion thereof, including any Unit, 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 lease 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.

1.30 “Security Interest Holder” means any person named as a secured party, security interest holder or beneficiary, or in a similar capacity, under any Security Interest.

1.31 “Subassociation” means and refers to any unit owners’ association as defined by the Act, and its successors and assigns, organized and established by the Declarant pursuant to or in connection with the exercise of any Development Rights.

1.32 “Subassociation Common Element” means all real and personal property interests and the Improvements or amenities thereon which may from time to time be owned, leased or maintained by any Subassociation or otherwise held or controlled by any Subassociation for the use, enjoyment and benefit of the owners of Units within such Subassociation, or some of them.

1.33 “Unit” means a physical portion of the Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration, or any Plats or Maps.

1.34 “Units That May Be Created” shall mean and refer to two-hundred and seven (207) Units which shall be the maximum number of Units that may be subject to this Declaration.

## **ARTICLE 2 GENERAL DECLARATION**

2.1 Intent. Through this Declaration, Declarant specifically intends to enhance and preserve the value, desirability, and attractiveness of the Community from time to time, and to provide for the maintenance of the Common Elements in a manner beneficial to all Owners. 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 to and running with the land, and shall at all times inure to the benefit of and be binding upon any person or entity having at any time any interest or estate in the Community, and their respective heirs, successors, representatives, or assigns.

## **ARTICLE 3 PROPERTY RIGHTS AND EASEMENTS**

3.1 Title to the Common Elements. Subject to the limitations and restrictions of this Declaration, title to the Common Elements shall be conveyed in fee simple, free and clear of all encumbrances except those existing of record immediately prior to Declarant’s ownership, by the Declarant to the Association, or to some or all of the Owners of Units, as may be appropriate to the form of ownership.

3.2 Owners’ Common Element Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the General Common Elements, including, without limitation, the right of ingress and egress to and from the Owner’s Unit, parking area, any private street, or any recreational facilities completed upon the Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit without the necessity of additional reference.

3.3 Extent of Owners’ Common Element Easement Of Enjoyment. The rights and easements of enjoyment created hereby shall be subject to the following:

3.3.1. The right of the Association to enforce the restrictions contained in this Declaration and to promulgate and publish Policies, Procedures, Rules, and Regulations which every Owner, its invitees, guests, tenants, and contractors shall strictly comply with, including, without limitation, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Elements if deemed necessary;

3.3.2. The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner’s voting rights and the right to use the Common Elements for any

period during which such Owner is in default under this Declaration, including, without limitation, the nonpayment of any assessment levied by the Association, and to make such suspensions for any infraction of its published rules and regulations;

3.3.3. The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Elements and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Elements for the benefit of the Members. Further, the additional right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the same. The Association shall have the right to grant easements under, over, across, through and upon the Common Elements as long as the easements granted do not interfere with the use of a Unit;

3.3.4. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes, subject to C.R.S. § 38-33.3-312, and subject to such conditions as may be imposed by the public entity;

3.3.5. The rights of the Association as set forth in the Articles and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Elements and, subject to C.R.S. § 38-33.3-312, to mortgage the Common Elements as security for any such loan;

3.3.6. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;

3.3.7. The right of Declarant (until termination of the Development Period) or the Board (after termination of the Development Period) to assign or allocate any part of the General Common Element to be a Limited Common Element, for the exclusive use of particular Units; and

3.3.8. No Owner shall be allowed to use the Common Elements to conduct a business without the prior written permission of the Association.

3.4 Delegation of Use. Subject to the provisions of this Declaration and any Policies, Procedures, Rules, or Regulations which may be established from time to time by the Association concerning the Common Elements, any Owner may delegate, in accordance with the Association Documents, its right of enjoyment to the Common Elements to the members of its family, tenants, guests, or contract purchasers who reside in its Unit. Each Owner shall be liable for any damage done to the Common Elements by its family, tenants, guests, or contract purchasers and for any breach of the Association's Policies, Procedures, Rules, or Regulations by such persons.

3.5 Conveyance or Encumbrance of Common Elements.

3.5.1. Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only if persons entitled to cast at least sixty-five percent (65%) of the votes in the Association vote in favor of that action.

3.5.2. An agreement to convey the Common Elements or subject them to a Security Interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the Owners having the requisite number of votes in the Association. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded with the Clerk and is effective only upon recordation.

3.5.3. Unless in compliance with this section, any purported conveyance, encumbrance, judicial sale, or other transfer of Common Elements is void.

3.5.4. A conveyance or encumbrance of Common Elements pursuant to this Section shall not deprive any Unit of its rights of ingress and egress to the Unit and support of the Unit.

3.5.5. A conveyance or encumbrance of Common Elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

3.6 No Partition of Common Elements. The Common Elements shall remain undivided and shall not be subject to partition. By acceptance of its deed or other instrument of conveyance or assignment, the Association and each Owner specifically waives its right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. The Association and each Owner agrees not to institute any such action. 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 Owners to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs, and other damages the complying Owners incur in connection therewith.

3.7 Changing Boundaries. Units may not be further subdivided or combined with one another and the legal boundaries between Units may not be changed or altered in any way from those shown on any Plats or Maps. However, subject to the terms and conditions of this Declaration, the Owner(s) of multiple Units shall have the right to physically combine all or any part of the area or space of one Unit with all or any part of the area or space of one or more adjoining Units, to the extent not otherwise prohibited by federal, state or local law or regulation. Even after such physical combination the Units so combined shall continue to be separate Units as defined herein and in the event that Units so combined are subsequently divided from one another, such division may only be constructed along the original boundaries of the involved Units shown on the Plats or Maps.

3.8 Physical Combination of Units. Units may only be combined through the removal or alteration of intervening partitions which lay along and over the boundaries of said Units, or through the creation of apertures in such intervening partitions, subject to the following provisions:

3.8.1. No construction, removal, alteration, or creation of any opening in any intervening partition wall between Units, nor any other act or omission arising when Units are combined under this section, shall impair the structural integrity (or the electrical, mechanical, or other utility systems), lessen the support of, or otherwise adversely impact any Improvement or aspect of the Community; and

3.8.2. The Owner(s) of the Units being physically combined, re-divided or both shall provide to the Association detailed construction and engineering plans, as appropriate, for all work to be done and all other plans, documents, material samples, color chips or samples, or other material, information, or documentation required by the Association at least 45 days' notice in advance of commencement of construction. The Association may require that the involved Owners incorporate into the design, engineering, construction and finish of the proposed work any design, materials, facilities, utilities or other structural, electrical, mechanical, cosmetic or other elements and/or design, engineering, construction or finish applications, techniques or materials, or that the Owners take or refrain from taking any other action, reasonably required by the Association for the benefit of the Association, some or all of the Owners, or some or all of the Units, the Improvements, or the Community. All plans for physical combination of Units under this section must be submitted and approved in accordance with the other provisions of this Declaration; and

3.8.3. All labor and materials used in any alteration of the Improvements under this section shall be of at least comparable quality to that utilized in the initial construction or most recent renovation of the Improvements and shall comply with all laws, ordinances, regulations and codes in effect at the time of the work. The Association shall be entitled to have an architect, engineer, construction manager and/or other qualified professional review and approve plans for the work, and the work itself, which approval shall not be unreasonably withheld; and the cost of these services shall be the personal obligation of the Owner(s) of the involved Units(s) and may be charged as a Common Expense against the involved Unit(s). The Owner(s) of the involved Unit(s) will be responsible, at their expense, for all labor, materials, and other costs and expenses, for preparing and recording all documents necessary to make these changes, and for obtaining approval of all required persons and entities, all in accordance with applicable federal, state and local law. In making those changes, the Owner(s) of the involved Unit(s) will not do anything to affect the title or marketability of the other Units and will indemnify all other Owners and the Association from all damages, expenses and liability of any nature incurred by or asserted against any of them arising from or related to such changes including, without limitation, reasonable attorneys' fees and costs and expenses of litigation; and

3.8.4. Any pipes, wires, conduits, chases, retaining walls, drainage or other systems running through, attached to or associated with such intervening partition walls or other partitions shall not be disturbed or relocated without the prior written consent of the Association, which shall not be unreasonably withheld, conditioned or delayed; and

3.8.5. All costs and expenses of compliance with the provisions of this section shall be the personal obligation of the Owner(s) of the Units combined and any related costs and expenses of the Association shall be assessed equally against the Units being combined; and

3.8.6. If the combined Units are divided from one another at any time for any reason, all intervening partitions and other Common Elements removed or altered upon combination of Units shall be replaced by and at the expense of the Owner(s) of Units previously combined, and shall automatically become Common Elements unless the Association agrees otherwise in its sole and absolute discretion; and

3.8.7. No construction or other action under this section shall unreasonably increase Common Expenses.

3.9 Other Easements. In addition to the Owners' Common Element easement of enjoyment, provided above, the Community shall be subject to the following:

3.9.1. Utility Easements. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Community for the purpose of installing, maintaining, repairing and placing any utilities or related services, including, without limitation, to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, or for other public purposes consistent with the intended use of the Community under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, poles, and other equipment, subject to the restrictions elsewhere in this Declaration, and the right to enter into agreements relating to such utility services and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on, in and through the Community without conflicting with the terms hereof. The foregoing easement shall be in addition to any other recorded easements on, in and through the Community, including, without limitation, any easements granted in any recorded subdivision Plat or Map. Notwithstanding any other provision contained in this section, no easements shall be granted pursuant to this section which shall unreasonably interfere with an Owner's use of its Unit. The rights reserved herein for Declarant shall pass to the Association upon the termination of the

Development Period, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association.

3.9.2. Drainage Easement. A non-exclusive easement is hereby granted to the Association, its officers, agents, employees, and assigns, upon, across, over, in, and under the Common Elements for drainage of stormwater and irrigation water. The Association shall pay for the installation, operation, maintenance, and repair of any necessary drainage facilities as Common Expenses, which shall be the Association's sole responsibility.

3.9.3. Maintenance Easement. A non-exclusive easement is hereby granted to the Association, its respective officers, agents, employees and assigns upon, across, over, in and under the Community as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including, without limitation, any maintenance required or permitted hereunder, any of Declarant's rights, inspection, maintenance, repair, replacement, construction or reconstruction of any facilities or utilities on or within the Common Elements; provided, however, that entry into any Unit in non-emergency situations shall only be made after providing reasonable written notice and during regular business hours, and, under emergency circumstances, shall only be made after such notice, if any, as is reasonable under the circumstances.

3.9.4. Common Wall Easement. Each Owner, its agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Units and in and upon adjacent Improvements for purposes of common wall repair or maintenance, upon reasonable notice to the Owners thereof. Any damage occasioned to the adjacent Unit or Improvements in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

3.9.5. Easement for Encroachments. If any part of the Common Elements, or any Improvements or structure encroaches upon a Unit, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit or other structure related thereto encroaches upon the Common Elements, or upon any adjoining Unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that any Improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachment of parts of the Improvements due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, without limitation,

encroachments caused by error in the original construction of any Improvement, by error in the Plats or Maps, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any Improvement or any portion thereof. Such encroachments and easements shall not be considered or construed to be title defects or encumbrances either on the Common Elements or Units. In interpreting any and all provisions of this Declaration, subsequent deeds, Mortgages, or other Security Interests relating to the Units, the actual location of the Improvement shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit, as indicated on the Plats or Maps.

3.9.6. Easement for Foundations. Owners of adjoining Units shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their Units rest.

3.9.7. Easements for Owner Maintenance. Where portions of the Units for which the Owners are responsible under the terms of this Declaration are located too close to relevant property boundaries as described or defined on a Plat or Map to permit physical access from entirely within the Unit, an easement is hereby granted over that portion of the neighboring Units, Common Elements, or other real properties as may be reasonably necessary to permit physical access to the Unit and maintenance, repair and replacement or all or any portion thereof.

3.9.8. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress, and egress over, in, upon, under, and across the Common Elements for the exercise of any special Declarant right hereunder or under the Act, including, without limitation, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's construction activities.

3.10 Easements Deemed Created. All conveyances of portions of the Community (including Units) hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument of such conveyance.

3.11 Recorded Easements. The Community, and all portions thereof, shall be subject to all recorded licenses and easements including, without limitation, any shown on any Plats or Maps, recorded now or hereafter, affecting the Community, or any portion thereof, and additionally subject to those recorded easements and matters shown or appearing of record with the Clerk as of the date of this Declaration.

**ARTICLE 4**  
**RESTRICTIONS ON USE**

4.1 Building Restrictions.

4.1.1. All Units shall be used only for residential purposes. Only one dwelling unit per Unit, as permitted by the City of Fruita, shall be constructed or permitted on a Unit. Every dwelling unit shall have a private garage for no less than two (2) vehicles and provide off-street parking for at least three (3) vehicles. Every driveway shall be constructed and maintained as a concrete paved surface.

4.1.2. Subject to the provisions of the Association Documents and this Declaration, which require approval from the DRB, among other things, the Owners may make any improvements or alterations to their respective Units that do not impair the structural integrity or functionality of any Improvement, electrical systems, communication systems, water systems, wastewater systems, mechanical systems, or Improvements, or lessen the support of any Common Element.

4.1.3. No structure of a temporary character, nor any recreational vehicle, trailer, teepee, tent, shack, garage, barn, or other outbuilding shall be placed, kept, stored or erected on any portion of the Community either temporarily or permanently.

4.1.4. An Owner shall not change, modify, paint, decorate, alter, or in any way make any change to any General Common Element.

4.1.5. No fence shall be permitted unless written permission is given therefore by the DRB, and the City of Fruita has issued a fence permit. The DRB shall approve a fence request if the fence is not higher than six feet and constructed of tan vinyl and is limited to the boundaries of a Unit only in the side and rear yards of a Unit. "Side" and "rear" yards are as defined by the City of Fruita. Chain link fences of six foot or less may be allowed if used to contain household pets and may be allowed by the DRB. Each Lot Owner shall maintain each fence on a Unit, or on the boundary of a Unit, in good order and repair.

4.1.6. Each Owner shall maintain the ground and grades of, and the landscaping on, a Unit so that water flows away from each residence and other structures within the Community and so that water near or under the foundation of all structures is minimized to the maximum extent reasonably practicable. Further, each Owner shall maintain the grade on and improvements to their Unit so that drainage/run-off water does not flow onto any other Unit or adjacent property unless the drainage/run-off water flows in a designated drainage easement. The Association may promulgate additional rules, regulations, policies, or procedures as a part of the Association Documents to further regulate and control water usage within the Community to further the purpose and intent of this section.

## 4.2 Maintenance Obligations.

4.2.1. Owner Maintenance. The Owners of all Units, at their sole expense, shall keep, maintain, and repair their Units and any Limited Common Elements allocated to their Units in good repair, and in a clean, safe, and attractive manner, free from the accumulation of trash or debris or visual deterioration. The Owners shall do no act or any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Units, Common Elements, or the provision of utility services to the same. In the event an Owner fails or refuses to perform maintenance required by this section, or modifies, alters, damages, or destroys any portion of the Community, the Association may cause such work to be performed as is reasonably necessary, and assess such Owner for the costs thereof. The Association may further regulate or standardize the Owners' maintenance obligations in the Association Documents.

4.2.2. Association Maintenance. The Association shall keep, maintain, and repair the General Common Elements in a neat, clean, attractive, and well-maintained condition, in proper working condition, and free from the accumulation of trash or debris or visual deterioration. The Owners shall promptly report to the Association, or its designated agent, any defect or need for repairs or maintenance for which the Association is responsible. The Owners shall not make any alterations in the General Common Elements or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Community. The costs and expenses incurred for the purpose of maintaining, repairing, and restoring the General Common Elements shall be borne by the Owners as a part of the Common Expenses. 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.

4.2.3. Maintenance Necessitated by Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any portion, part or component of the Community is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family, or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family, or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability shall be determined by the Association at a hearing after notice to the Owner.

4.2.4. Access at Reasonable Hours. For the purpose of performing the maintenance referred to in this section and inspections related thereto, the Board, through its duly authorized agents, contractors or employees shall have the right, after reasonable notice to the Owner or occupants of a Unit, during regular business hours, to enter upon any Unit and Improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board or its agents, contractors or employees may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost, or damage caused by its action, except by its gross negligence or willful misconduct.

#### 4.3 Party Walls.

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

4.3.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

4.3.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty and if the Association does not restore such wall with insurance proceeds or a special assessment, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4.3.4. Weatherproofing. Notwithstanding any other provisions of this section, an Owner who by its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

4.3.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this section, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decisions shall be by a majority

of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by an Owner, the Board shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorney fees.

#### 4.4 Use Restrictions and Offensive Activities.

4.4.1. *No Accumulation of Trash.* No Unit shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate in any Unit or on the Common Elements. All garbage, rubbish and trash shall be disposed of in appropriate trash receptacles and shielded from view.

4.4.2. *Residential Use Only.* No Unit shall be used for any purpose other than residential purposes and home occupations. For purposes of this section, "home occupations", shall mean an occupation by the resident conducted entirely within the Unit, 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 a Unit or part thereof as a personal office so long as its customers are not permitted to come to its personal office; however, the establishment of a barber shop would be prohibited. No goods, equipment, materials or supplies used in connection with any trade, service, or business except such items as may be incidental to residential uses shall be kept within the Units.

4.4.3. *Nuisances and Decisions Regarding Use.* No obnoxious, offensive, or otherwise disturbing or annoying activity which would constitute a public or private nuisance or annoyance to the Community shall be permitted. In the event a dispute arises as to whether a particular use of a Unit constitutes a nuisance or annoyance to the Community under this section, the Association, acting through the Board, shall determine the matter in its sole and absolute discretion, exercised in accordance with the Association Documents and the Act.

4.4.4. *Hazardous Activities.* No activities shall be conducted within or upon the Community or in any Unit, which are or may be unreasonably hazardous to any person or property. Except as expressly permitted in the Association Documents, no Owner shall use or permit its Unit to be used for the manufacture, storage, use, or disposal of any substance classified or categorized as hazardous by federal, state or local law or regulation ("Hazardous Material"), nor will any Owner do or permit any act or omission anywhere within the Community that is in violation of any federal, state or local law or regulation. No Owner shall do or permit any act or omission anywhere within the Community that would or may cause the cancellation of any insurance. Each Owner shall indemnify and hold each other Owner, and the Association, harmless from and against all costs, including attorney fees and other expert or professional consultant's fees, expenses, losses, liabilities, and damages of any nature, including personal injury, property damage,

and remediation costs, which result or arise, in whole or in part, from the manufacture, storage, use, or disposal of any Hazardous Material within the Community.

4.4.5. *Firearms.* No firearms, fireworks prohibited by federal, state or local law or regulation, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged within the Community.

#### 4.5 Restrictions on Parking and Storage.

4.5.1. Except as specifically authorized by the Board, no part of the Community within the lawful control of the Association, including, without limitation, private streets, drives, or parking areas, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, trucks larger than one (1) ton, bus, or self-contained motorized recreational vehicle, except as temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Community that are necessary for construction or the maintenance of the Common Elements, Units, or making deliveries or performing services. Notwithstanding the foregoing, the Association may not prohibit the parking of some motor vehicles by certain emergency service providers under the criteria set forth by the Act.

4.5.2. To the maximum extent permitted by applicable law, no abandoned vehicles shall be stored or parked upon any part of the Community. For the purpose of this section, an “abandoned vehicle” is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion or has not been moved for a period of five (5) days or longer.

4.5.3. To the maximum extent permitted by applicable law, the Board may make rules and restrictions regarding parking and vehicular traffic in the Community, and the Board may also designate any parking spaces within the Common Elements as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to an Owner, and may require that all Owners park their vehicles in their assigned parking spaces or inside their garages, rather than in driveways, private streets or other parts of the Community. Garages are intended for the purpose of parking rather than storage. Neither Owners, tenants, guests, family nor other invitees shall park within or obstruct any prohibited area, including, without limitation, any fire lane. Any vehicle or other item that is parked in violation of any rules or restrictions shall be subject to immediate removal by the Board or its agents at the expense of the Owner of such vehicle. Notwithstanding any other provision contained herein, no vehicles of any type shall be parked on any private street within the Community.

4.6 Pets. Each Unit shall be entitled to a maximum of no more than two (2) dogs or cats (or one of each) and a reasonable number of other "Household Pets" (meaning generally recognized household pets such as fish, birds, rodents, and non-poisonous reptiles), so long as such dogs, cats and other Household Pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, and do not otherwise become a nuisance or threat to other Owners or occupants. Permitted dogs, cats and other Household Pets must be restrained at all times within the Owner's Unit and shall not be permitted outside such Unit except when leashed and accompanied by the pet's owner or the owner's representative. All dogs, cats, and other Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws. The Owner Unit where a dog, cat or other Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and of any clean-up of the Owner's Unit and of the streets, sidewalks, Common Elements, or other Units necessitated by such pet. The Board shall be responsible for enforcing the restrictions set forth in this section, and shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats and other Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance or threat to the Owners or occupants, or that a Unit, Owner or occupant is otherwise in violation of this section, and to take such action or actions as it deems reasonably necessary to remedy the violation, including, without limitation, the levying of fines or assessments. Also without limiting the generality of the foregoing, the Board may require the owner or custodian of a dog that barks or howls excessively, or a dog, cat or other Household Pet with other offensive habits or threatening behavior, to confine such animal indoors, or to permanently remove such animal from the Community. No horses, livestock, fowl, or insects of any type shall be kept on the Community. Further, the Board may institute such rules as it deems advisable for the control of pets, including, without limitation, prohibitions and restrictions (including the right to establish further limits on the number, weight and size of the pets that may be kept, and the right to prohibit particular breeds of dogs in order to comply with the Association's liability insurance requirements).

4.7 Rental. Any lease agreements between an Owner and a tenant shall provide that the term of such lease shall be subject in all respects to the provisions of this Declaration and the Association Documents, and that any failure by tenant to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing, and the Board may require the use of its approved form or the insertion of particular provisions, and a copy of any lease shall be provided to the Board by the Owner. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has repeatedly violated any provision of this Declaration or the Association Documents.

4.8 Signs. Political campaign signs shall be permitted in the Community at such times and in such manner as specifically provided by federal, state, or local law. Aside from political campaign signs as provided, no sign of any kind shall be displayed to the public view on any Unit except one professional sign of not more than four (4) square feet advertising a Unit for sale or rent. Signs on the Common Elements are subject to regulation by the Association.

4.9 Restrictions Upon Association and Owners. Unless at least sixty-five percent (65%) of the Eligible Mortgagees (based upon one (1) vote for each Unit encumbered by a First Mortgage) and the Owners (other than Declarant) by vote or agreement of Owners of Units of which at least sixty-five percent (65%) of the votes in the Association are attached, have given their prior written approval, neither the Association nor the Owners shall be empowered or entitled to do any of the following:

4.9.1. by act or omission, seek to abandon or terminate this Declaration or any scheme or architectural review, or enforcement thereof, as set forth in this Declaration, regarding the architectural design, exterior appearance, or exterior maintenance of the Units, Improvements thereon, or the Common Element, or the maintenance of the common property, party walls or common fences and roads, or the upkeep of lawns and plantings of the Community;

4.9.2. by act or omission, seek to abandon, partition, subdivide, mortgage, encumber, sell or transfer any of the Common Element, except for the granting of utility easements as provided in this Declaration; any conveyance or encumbrance of the Common Element shall also comply with voting requirements of C.R.S. § 38-33.3-312;

4.9.3. fail to maintain full current replacement cost, fire, and extended insurance coverage on the Units and Common Elements, and such other insurance as is required under this Declaration;

4.9.4. use hazard insurance proceeds for loss to the Improvements for other than repair, replacement or reconstruction of such Improvements as herein provided;

4.9.5. change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner; or

4.9.6. a material change in any of the following provisions of this Declaration: voting rights; assessments, assessment liens or the priority of assessment liens; reserves for maintenance, repairs, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements; expansion or contraction of the Community, or the addition, annexations, or withdrawal of Annexable Property to or from the Community; insurance or fidelity bonds; leasing of Units; imposing of any restrictions on an Owner's right to sell or transfer its Unit; a decision by the Association to establish self-management when professional management had been required previously by this Declaration or by a First Mortgage holder; restoration or repair of the Community (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Community after substantial destruction or

condemnation occurs; or any provisions that expressly benefit First Mortgage holders, insurers, or guarantors.

4.10 Miscellaneous.

4.10.1. No portion of the Community 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.

4.10.2. All facilities for permanent utilities service shall be kept or maintained underground or in the original condition at such time the Units were first completed.

4.10.3. No antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained out of doors, except as shall be approved and permitted by the Association, acting in accordance with federal, state, and local law or regulation.

4.10.4. No dirt bikes, off-road vehicles, boats, campers, trailers or other vehicles used or intended for use in recreation, as opposed to passenger travel over established roadways, shall be operated in the Community at any time except for ingress and egress to and from the Community and upon established roads.

**ARTICLE 5**  
**THE ASSOCIATION, MEMBERSHIP, AND VOTING RIGHTS**

5.1 Association Structure, Powers and Duties. The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and its Articles and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board to manage its affairs. The Board shall be elected by its Members; provided, however, that the Declarant shall have the sole right to appoint a majority of the members of the Board during the Period of Declarant Control.

5.2 Membership. The following shall be members of the Association: every Owner of a Unit that is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for membership. Except as provided herein, each Unit shall have voting rights based upon that Owner's Allocated Interest. The Association shall have one class of voting membership who shall be the Owners. Except during the Period of Declarant Control, the Owners shall elect all of the members of the Board.

5.3 Declarant Control. During the Period of Declarant Control, the Declarant shall appoint a Board of at least three (3) members subject to the limitations of the Act.

5.4 Termination of Declarant Control. The Period of Declarant Control shall terminate as provided in the Act.

5.5 Owner Control. The Owners shall elect all of the members of the Board following the termination of the Period of Declarant Control, as set forth as follows:

5.5.1. Except as otherwise provided above, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall appoint the officers. These Board members and officers shall take office upon termination of the Period of Declarant Control.

5.5.2. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-five percent (65%) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a Board member appointed by the Declarant.

5.6 Registration of Owners and Security Interest Holders. Each Owner shall register a single mailing address and electronic mail address with the Association in writing and update the same as necessary. All notices and other communications from the Association shall be sent to the electronic and/or physical mail address of the Owner then registered with the Association, and, if none is so registered, to the physical mailing address of such Owner's Unit only. Any Owner that grants any Security Interest encumbering its Unit shall notify the Association in writing of the name and contact information for the Security Interest Holder.

5.7 Voting Rights.

5.7.1. Association membership shall be appurtenant to and may not be separated from ownership of any Unit.

5.7.2. The Association shall have one class of voting membership, and there shall be the number of votes for each Unit in any matter subject to a vote of the Members as provided in Section 1.3.2. Votes may be cast as the Owners determine, but in no event shall more votes be cast with respect to any Unit than have been allocated to it by this Declaration.

5.8 Limitation Upon Liability.

5.8.1. *Indemnification of Officers and Board Members.* Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges,

liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

5.8.2. *Limitation Upon Liability of Association.* Notwithstanding the duty of the Association to maintain and repair parts of the Community, 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 Community or by the conduct of the Owners or other persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

5.9 Association Books and Records. In accordance with the Act, the Association shall make the following information available to Owners and any First Mortgagee: (a) the date on which the fiscal year commences; (b) its operating budget for the current fiscal year; (c) its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure; (d) the results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure; (e) a list of all Association insurance policies, including, without limitation, property, general liability, Association director and officer professional liability, and fidelity policies, and which list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates; (f) all of the Association Documents; (g) the minutes of the Executive Board and Member meetings for the fiscal year immediately preceding the current annual disclosure; (h) and the Association's responsible governance policies adopted under C.R.S. § 38-33.3-209.5. "Available" shall mean readily available to Owners and at their convenience and may be provided by the Association by any one of the following means: posting on an internet web page with accompanying notice of the web address via first-class mail or email; the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

5.10 Association Budget. 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 Owners entitled to cast sixty-five percent (65%) of the votes in the Association reject the budget, the budget is ratified, whether or not a quorum is present in person or by proxy. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

5.11 Required Disclosures to Owners. The Association shall provide to all Owners, at least once per year, a written notice stating the name of the Association, the name of the

Association's designated agent or management company, if any; and a valid physical address and telephone number for both the Association and the designated agent or management company, if any. The notice shall include the name of the Community, the initial date of the recording of the Declaration, and the reception number or book and page for the main document that constitutes the Declaration. If the Association's address, designated agent, or management company changes, the Association shall provide all Owners with an amended notice within ninety (90) days after the change.

## **ARTICLE 6 DESIGN REVIEW**

6.1 Approval Required. No Improvements of any kind shall be erected, placed, or altered on any Common Element or on or within any Unit until the construction plans and specifications have been approved in accordance with this Article. Before commencing construction or alteration of Improvements, the Owner shall first submit plans and specifications for such Improvements (collectively, "Plans," defined more specifically below) to the Association for approval.

6.2 Design Review Board. The Association shall approve or disapprove Plans submitted under this Article through its DRB, which shall consist of three (3) persons appointed by the Board. In the absence of such appointment, the Board shall serve as the DRB. Approval or disapproval of Plans shall be determined by majority vote of the members of the DRB.

6.2.1. The method and manner of the DRB's appointment, replacement, and/or removal, as well as method of operation, to the extent not provided herein, shall be set forth in the Association Documents.

6.2.2. Within fifteen (15) days after receipt of any application for approval and associated Plans, the DRB shall either accept the application as complete or reject it as incomplete. Any application that is not accepted or rejected within fifteen (15) days after submission to the DRB shall be deemed complete and accepted for all purposes.

6.2.3. The DRB's approval or disapproval of all accepted applications for approval shall be in writing. In the event the DRB, or its designated representative, fails to approve or disapprove an application within thirty (30) days after the application is accepted by the DRB, the application will be deemed approved.

6.2.4. The DRB 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 the Association Documents and this Declaration. In the absence of standards and procedures in the Association Documents, the DRB shall primarily consider whether the application is in harmony with the external design of the Community and consistent with this Declaration. The DRB shall, in the exercise of its judgment and determination, use reason and good faith. The DRB and the members

thereof shall not be liable for damage to any person submitting applications for approval or to any Owner 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 DRB shall be deemed conclusively binding upon the Owners.

6.2.5. Neither the members of the DRB, nor such representatives as it may designate to carry out its functions under this Declaration or the Association Documents, shall be entitled to any compensation for services performed. Nothing in this sub-section shall restrict the authority of the DRB, or its designated representatives, to engage and pay for the services of an appropriately qualified professional, such as an engineer or architect, for the purpose of evaluating applications.

6.3 Construction and Alteration Only in Accordance with Approved Plans. All Improvements shall be constructed in conformity with existing building codes of the City of Fruita and the Plans for such Improvements approved by the DRB in accordance with this Article. It is the Owner's responsibility to submit Plans and obtain all necessary approvals. All construction or alteration of Improvements shall comply with the Plans, as approved and must be accepted by the building officials of the City of Fruita before occupancy or use.

6.4 Plans. Plans submitted pursuant to this Article shall contain sufficient detail to show the nature, kind, shape, height, materials, and location of all proposed Improvements. The Association may future regulate, clarify, or limit what constitutes acceptable Plans in the Association Documents.

## **ARTICLE 7 ASSESSMENTS**

7.1 Owner's Obligation. By accepting a deed to any Unit, each Owner agrees to pay to the Association all the assessments, to be fixed and levied from time to time as provided in this Declaration and the Association Documents. 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. No Owner may waive or otherwise escape personal liability for the payment of the Assessments, charges, fees, fines and other sums provided for herein by non-use of the Common Elements or the facilities contained therein, by abandonment or leasing of its Unit or by asserting any claims against the Association, the Declarant, or any other person or entity. In addition to the foregoing Assessments, charges, fees, fines and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against its Unit, as well as all charges for separately metered utilities servicing its Unit. The charges for any utilities that are master metered shall be included in the assessments levied by the Association.

7.2 Common Expense Assessments. 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. The sum or net advanced estimate so determined shall be assessed to the Owners as a common expense assessment by allocating each Unit its share of Common Expenses as provided in section 1.2.1, above. Assessments shall be paid in monthly installments or as otherwise directed by the Association.

7.3 Special Assessments. If at any time during the fiscal year the Common Expense assessment proves inadequate for any reason, including, without limitation, nonpayment of any Owner's share of Common Expenses, the Board may levy a further assessment in the amount of such actual or estimated inadequacy. Any special assessment so levied shall be assessed to the Owners according to each Unit's allocated interest, as provided in section 1.2.1, above. Such special assessment shall be paid as the Association directs.

7.4 Capital Improvement Assessments. An assessment may also be levied for the purpose of defraying in whole or in part the cost of designing, re-designing, constructing, re-constructing, repairing, or replacing any Improvement in the Community, including fixtures, landscaping or personal property related thereto, provided that such assessment shall have the assent of a majority of the Units subject to the assessment. Assessments under this section shall be payable by the Owners according to each Unit's allocated interest, as provided in section 1.2.1 above, as and when directed by the Association.

7.5 Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner as a result of such Owner's failure to restore or maintain its Unit as provided herein. Such reimbursement 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 Unit and shall be due and payable as the Association directs.

7.6 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:

7.6.1. The Association may elect to accelerate and declare immediately due and payable the remaining balance of regular or special assessments for such fiscal year.

7.6.2. 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 reasonable attorney's fees.

7.6.3. All delinquent assessments shall be a lien on the Owner's Unit.

7.6.4. Beginning with the second month of delinquency, interest at the rate of eight percent (8%) per annum will be added to all delinquent amounts on a monthly basis until payments are current.

7.6.5. The Association may also charge a fee for late payment, established, charged, and determined pursuant to the Association Documents.

7.7 Lien for Assessments.

7.7.1. The Association has a statutory lien on a Unit for any assessment levied against that Unit. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations.

7.7.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board or managing agent of the Association may prepare, and record in the records of the Clerk, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the assessment and collected as a part thereof. The Association's lien may be foreclosed in a judicial proceeding.

7.7.3. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments becomes due.

7.8 Priority of Association Lien. Pursuant to the Act, and as provided therein, a lien under this Article is prior to all other liens and encumbrances. Notwithstanding anything herein to the contrary or anything in the Act to the contrary, if federal law applies, no liens for assessments shall be prior to the lien of a mortgage insured or guaranteed by the FHA, VA or other government agencies to the extent required by such federal law.

7.9 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent Assessment was due, except as provided by the Act, specifically, C.R.S § 38-33.3-316(2)(b)(I). Sale or transfer of any Unit shall not affect the lien of said Assessment charges except that sale or transfer of any Unit pursuant to foreclosure or any such mortgage or any such executory land sales contract, or any proceeding in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of Assessment charges which became due prior to any acquisition of title to such Unit by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including, without limitation, any deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; no such sale, transfer, foreclosure, or any above described proceeding in lieu or in cancellation thereof, shall relieve any Unit from liability for any Assessment charges becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Unit for Assessments due during the period of its ownership of such Unit for Assessments due during the period of its ownership nor from the provisions of C.R.S. § 38-33.3-316.

7.10 Homestead. The lien of the Association Assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien. This section does not affect the priority of mechanics' liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of C.R.S. § 15-11-201, as amended.

## **ARTICLE 8 INSURANCE**

8.1 Insurance. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as common expenses. In addition, the Association may maintain such insurance on such other property as the Board may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any governmental agencies with respect to their insurance, guaranty or purchase of security interests. Nothing in this Article shall be construed to obligate the Association to insure Owners' personal property, provide personal liability insurance to Owners, or insure Improvements that have not been approved by the DRB.

8.1.1. Property insurance on the Community for broad form coverage causes of loss; except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations and other matters normally excluded from property policies.

8.1.2. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. 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.

8.1.3. A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, managers, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who controls or disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at

any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required above and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required above. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection.

8.1.4. If any portion of the Community is or should become located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

(a) the maximum coverage available under the National Flood Insurance Program for all Community and other insurable property located within a designated flood hazard area; or

(b) one hundred percent (100%) of current replacement cost of all Improvements and other insurable property located within a designated flood hazard area.

8.1.5. In addition, the Association may maintain such insurance on such other property as the Board may determine in its discretion from time to time, or as may be required by Colorado law. Notwithstanding any of the specific insurance requirements specified in this section, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any governmental agencies with respect to their insurance, guaranty or purchase of security interests. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser or seek other advice or assistance.

8.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty

(30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

8.3 Deductibles. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

8.3.1. To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than one (1) Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

8.3.2. Any loss to any Common Elements, which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, the Owner's tenants, family members, guests, or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

8.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of this Article, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Community has been completely repaired or restored or the Community is terminated.

8.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

8.6 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association 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 mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or any Owner from collecting insurance proceeds.

8.7 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Owners shall maintain insurance on their furnishings and personal property, and Owners shall maintain personal liability insurance for no less than one hundred thousand dollars (\$100,000.00). Owners shall submit a certificate of insurance showing compliance with this subsection within thirty (30) days following written request from the Association.

8.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

8.9 Notice of Cancellation. If the insurance that is required to be carried by the Association, as provided in this Article, is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners

**ARTICLE 9**  
**DAMAGE OR DESTRUCTION**

9.1 Association as Agent. The Declarant and all of the Owners irrevocably constitute and appoint the Association their true and lawful agent in their name, place and stead for the purpose of dealing with the Community upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute appointment of the attorney in fact herein provided.

9.2 Damage or Destruction of Units.

9.2.1. General Authority of Association. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Unit Owner that may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the Improvements as used in the succeeding subsection means restoring the Community to substantially the same condition in which it existed prior to damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance of the Association collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners representing an aggregate ownership interest to sixty-five percent (65%) or more of the Units, and all First Mortgagees in a Unit agree not to rebuild. In the event any such First Mortgagees should not agree to rebuild, the Association shall have the option to purchase such mortgage by payment in full of the amount secured thereby if the Owners representing an aggregate ownership interest of sixty-five percent (65%) or more of the Units, excluding Units owned by the Association, are in agreement not to rebuild. The Association shall obtain the funds for such purpose by special assessments.

9.2.2. Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the Community, the Association shall obtain reliable and complete estimates of the costs of repair or reconstruction of that part of the Community damaged or destroyed.

9.2.3. Repair or Reconstruction. As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Community damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans or may be in accordance with any other plans and specifications the Association may approve. The location of the Improvements shall be substantially the same as prior to the damage or destruction.

9.2.4. Funds for Reconstruction. If the proceeds of any insurance collected are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Further, levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

9.2.5. Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for herein constitute a fund for the payment of cost or repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made, or would have made had there been an assessment(s).

9.3 Damage or Destruction of Common Elements. Any portion of the Common Elements for which insurance is required under C.R.S. § 38-33.3-313 which is damaged or destroyed must be repaired or replaced promptly by the Association, as provided by C.R.S. § 38-33.3-313(9). Condemnation. If a Unit, or any part thereof, is acquired by eminent domain, the provisions of C.R.S. § 38-33.3-107 shall apply. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Elements, any part thereof or any interest therein, with a value (including loss of value to the balance of the Common Elements thereon), as reasonably determined by the Association, in excess of \$5,000.00, the Association shall give prompt notice thereof, including a description of the part of or the interest in the Common Elements sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings pursuant to which the Common Elements or any part thereof or any interest therein, is relinquished without giving all Eligible Mortgagees of Units and all Owners at least fifteen (15) days' prior written notice thereof. In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Elements, the award made for such taking shall be paid to the Association as provided by C.R.S. § 38-33.3-107(3) and after the approval described below, the award shall be applied toward the repair and restoration of the Common Elements, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that sixty-five percent (65%) or more of the Owners and at least fifty-one percent (51%) of Eligible Mortgagees do not duly and promptly approve the repair and restoration of such Common Element, the Association shall disburse the net proceeds of such award jointly to the Owners and their respective First Mortgagees at the rate of one (1) equal share per Unit. Notice of Loss to Eligible Mortgagee. In the event that there shall be any damage to or destruction of: (a) any Improvement on the Unit on which such Eligible Mortgagee holds the First Mortgage which shall be in excess of Five Thousand Dollars (\$5,000.00) and/or (b) the Common Elements which shall be in excess of Five Thousand Dollars (\$5,000.00), or in the event of the condemnation of any part of the Common

Element as described in this Article in excess of Five Thousand Dollars (\$5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such Eligible Mortgagee. Notwithstanding any provision to the contrary, no provision of this Declaration or of any other document relating to the Community shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to an Owner of Insurance proceeds or condemnation awards for loss to or taking of Units or Common Element or both.

#### **DAMAGE OR DESTRUCTION OF COMMON ELEMENTS**

10.1 Damage or Destruction of Common Elements. Any portion of the Common Elements for which insurance is required under C.R.S. § 38-33.3-313 which is damaged or destroyed must be repaired or replaced promptly by the Association, as provided by C.R.S. § 38-33.3-313(9).

10.2 Condemnation. If a Unit, or any part thereof, is acquired by eminent domain, the provisions of C.R.S. § 38-33.3-107 shall apply. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Elements, any part thereof or any interest therein, with a value (including loss of value to the balance of the Common Elements thereon), as reasonably determined by the Association, in excess of \$5,000.00, the Association shall give prompt notice thereof, including a description of the part of or the interest in the Common Elements sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings pursuant to which the Common Elements or any part thereof or any interest therein, is relinquished without giving all Eligible Mortgagees of Units and all Owners at least fifteen (15) days' prior written notice thereof. In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Elements, the award made for such taking shall be paid to the Association as provided by C.R.S. § 38-33.3-107(3) and after the approval described below, the award shall be applied toward the repair and restoration of the Common Elements, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that sixty-five percent (65%) or more of the Owners and at least fifty-one percent (51%) of Eligible Mortgagees do not duly and promptly approve the repair and restoration of such Common Element, the Association shall disburse the net proceeds of such award jointly to the Owners and their respective First Mortgagees at the rate of one (1) equal share per Unit.

10.3 Notice of Loss to Eligible Mortgagee. In the event that there shall be any damage to or destruction of: (a) any Improvement on the Unit on which such Eligible Mortgagee holds the First Mortgage which shall be in excess of Five Thousand Dollars (\$5,000.00) and/or (b) the Common Elements which shall be in excess of Five Thousand Dollars (\$5,000.00), or in the event of the condemnation of any part of the Common Element as described in this Article in excess of Five Thousand Dollars (\$5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such Eligible Mortgagee. Notwithstanding any provision to the contrary, no provision of this Declaration or of any other

document relating to the Community shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to an Owner of Insurance proceeds or condemnation awards for loss to or taking of Units or Common Element or both.

## **ARTICLE 11 CONVEYANCES, OWNERSHIP, AND TAXATION OF UNITS**

11.1 Taxation. Each Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act. For the purpose of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the Allocated Interests. The Association shall furnish to the Tax Assessor of the County of Mesa, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

11.2 Inseparability. Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

## **ARTICLE 12 MECHANICS' LIENS**

12.1 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated in any Unit with the consent or at the request of the Owner thereof, the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the space within the Unit of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit.

12.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by this Article by collecting from the proper Owner, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge of such lien. In the event that such Owner refuses or fails to so indemnify within

seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section and such amount to be indemnified shall be and constitute an additional assessment for collection by the Association.

12.3 Effect of Part Payment. In the event a lien attributable to labor performed and/or materials furnished on the Community or any portion thereof, is claimed against two or more Units, the Owner(s) of any of the affected Units may pay to the lienholder the amount of the lien attributable to such Owner's Unit and the lienholder shall release such Unit from the lien. Partial payment and release of any such lien with respect to any Unit(s) shall not prevent the lienholder from enforcing its rights against the Unit(s) for which payment has not been received.

### **ARTICLE 13 PHASED DEVELOPMENT**

13.1 Right to Expand. Declarant reserves the right to expand the Community during the Development Period without the approval of the Owners or any other parties to include additional land and one or more additional Improvements located upon all or any part of the Annexable Property; provided, however, that the total number of Units in the Community, as expanded, shall not exceed the number of Units That May Be Created. By accepting a deed to a Unit or Unit, each Owner hereby grants to Declarant a right to expand the Community and to modify the Owner's Allocated Interest. Any expansion hereunder shall comply with C.R.S. §38-33.3-209 and 210.

13.2 Unspecified Real Property. Declarant also reserves the right to annex to the Community additional, unspecified real estate to the maximum extent permitted by the Act, following the provisions of this Article otherwise applicable to the Annexable Property.

13.3 Procedure for Expansion. Expansion under this Article may be accomplished by the filing for record by Declarant with the Clerk, no later than the expiration of the Development Period, an amendment or amendments to the Declaration containing a legal description of the land area to be added to the Community, together with any supplemental Plats or Maps which may be required. Any such amendment or amendments to this Declaration shall also contain a listing of the number of Units or Units to be contained in the expanded portion of the Community and shall assign an identifying number to each new Unit or Unit thereby created, shall reallocate each Owner's Allocated Interest, and, except as otherwise provided herein, any Limited Common Elements thereby created and designate the Units to which each is allocated to the extent required by C.R.S. §38-33.3-208. The expansion may be accomplished in "phases" by successive amendments and may include Units that are condominiums as defined by the Act.

13.4 Withdrawal. Declarant also reserves the right from time to time to withdraw from the Community any Declarant-owned property that has been annexed or added thereto, including Units and Common Elements. Withdrawal may be accomplished by recording by Declarant an amendment to this Declaration and an amendment to the Plat or Map affected by the withdrawal,

if necessary. Upon recording of such amendments, the withdrawn properties shall no longer be part of the Community or subject to this Declaration or any applicable amendment or supplement thereto in any way. Each Declarant-owned Unit, Common Element, part or parcel of real estate is declared to be a separate portion of real estate for purposes of the right of withdrawal reserved in this section and Declarant expressly reserves the right to withdraw one or more Declarant-owned parcels, no matter how described or defined, from the Community.

### 13.5 Effect of Expansion/Contraction.

13.5.1. In the event of expansion or withdrawal, the definitions used in this Declaration shall automatically be expanded or contracted to encompass and refer to the Community as so expanded or contracted (e.g., "Community" shall mean the Initial Property plus any additional real property added by any amendment to this Declaration, less any property withdrawn). Every Owner of a Unit within an expanded or contracted portion of the Community shall, by virtue of such ownership and upon recordation of the amendment, be a member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association member. The recording with the Clerk of an amendment to this Declaration incident to any expansion shall operate automatically to grant, transfer and convey to all of the Owners of the Units located within the Community and the part of the expansion property added thereby, their respective, appurtenant, undivided rights, titles, interests, privileges, duties and obligations in and to both the existing Common Elements and the new Common Elements, if any, added to the Community as a result of such expansion; provided, however, Assessments for Units and Units within the annexed area shall commence as set forth in this Declaration, but no part of the expansion property shall be subject to Assessments or any provision of this Declaration until the annexation of that part is completed in accordance with this article.

13.5.2. Upon recording of the amendment or amendments to this Declaration and any supplemental Plat or Map with the Clerk, the additional Units and Common Elements shall be subject to the provisions of this Declaration.

13.5.3. Until the expansion of the Community is accomplished by recording the amendment(s) to this Declaration and supplemental Plat(s) or Map(s), the Annexable Property and any Improvements constructed thereon shall not be subject to this Declaration in any way whatsoever, including, without limitation, consideration for the purpose of apportioning Assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in this Declaration or otherwise shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's, or its successors' or assigns', sole and complete right, title and interest to the Annexable Property and any Improvements constructed thereon. The Declarant alone shall be liable for all expenses of the Annexable Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. The Declarant's right to annex, and other Development Rights, may be exercised at different times and as to different

portions of the Annexable Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions, the Declarant is not required to exercise any development rights to any and all portions of the remaining Annexable Property. Any portion of the Annexable Property may be designed as Common Elements or Limited Common Elements as shown by the Plat or Map that has been or will be recorded regarding that portion.

13.6 Subassociations. Declarant in exercising its Development Rights under this Declaration may, but shall not be required to, create Subassociations and Subassociation Common Elements within portions of the Community. Such Subassociations may be developed in a condominium form of ownership as defined by the Act and may also be subject to other, further or different covenants, conditions, restrictions and easements than are provided in this Declaration, including, without limitation, additional obligations to pay assessments to such Subassociation or otherwise.

#### **ARTICLE 14 SPECIAL AND RESERVED DECLARANT RIGHTS**

14.1 Development Rights and Special Declarant Rights. Declarant reserves for twenty (20) years after the recording of this Declaration, certain development and special declarant rights that include the right to:

14.1.1. redesignate uses, to relocate boundaries between Units, enlarge, reduce, or diminish the size of the Common Elements, subdivide Units or complete or make Improvements, as the same may be indicated on Plats and Maps filed of record or filed with this Declaration;

14.1.2. add, create, or construct additional Units, General Common Elements, Limited Common Elements, or to convert Common Elements into Units;

14.1.3. withdraw all or any part of the property from the Community, provided portions of the Community cannot be withdrawn once the Unit(s) or Common Elements are conveyed to an Owner other than Declarant;

14.1.4. make amendments to this Declaration and the Association Documents to meet or comply with any requirements of FHA or VA;

14.1.5. exercise any development right reserved or allowed in the Act and to amend this Declaration, Plats and Maps in connection with such right;

14.1.6. use, and to permit others to use, easements through the Common Elements, as may be reasonably necessary;

14.1.7. appoint or remove any officer of the Association or any Director during the Period of Declarant Control; and

14.1.8. exercise any additional reserved right created by any other provision of this Declaration.

14.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights to:

14.2.1. maintain mobile and other sales offices, parking lots, management offices, and models on the Common Elements or Units owned by Declarant;

14.2.2. erect and maintain customary sales and development signage on the Property and advertising Units for sale;

14.2.3. establish, from time-to-time, by dedication or otherwise, public streets, utility and other easements for purposes, including without limitation, public access, access paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions;

14.2.4. enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulations of parking or recreational facilities, Common Elements, which may or may not be a part of the Community; and

14.2.5. perform warranty work, and repairs and construction work, and to store materials in secure areas, and in the Common Elements, and the future right to control such work and repairs and the right to access thereto, until completion. All work may be performed without the consent or approval of any Owner or Security Interest Holder. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Community.

14.3 Rights Transferable/Rights Transferred. Any rights created or reserved under this Declaration or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the records of the Clerk. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. §§ 38-33.3-209(6) and 210 without the consent of the Association, any Owners, or any Security Interest Holder.

14.4 No Further Authorization Needed. The consent of Owners or Security Interest Holders shall not be required to exercise any Development Rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the Community in whatever order determined. Declarant

or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the Initial Property.

14.5 Termination of Reserved Rights. The rights reserved by Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by Declarant and recorded in the records of the Clerk.

## **ARTICLE 15 GENERAL PROVISIONS AND MISCELLANEOUS**

15.1 Management Agreements and Other Contracts. The Association may enter into agreements for professional management of the Association's business. Each Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association shall be subject to review and approval by the Department of Veterans Affairs or the Federal Housing Administration and shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Period of Declarant Control. Furthermore, any contracts and leases during the Period of Declarant Control shall be subject to C.R.S. § 38-33.3-305. If professional management has been previously in effect after being required by any holder, insurer or guarantor at that time or later, any decision to terminate professional management and to establish self-management by the Association shall require the prior consent of sixty-five percent (65%) of the Eligible Mortgagees (based upon one (1) vote for each Eligible Mortgagee held) and vote or agreement of Owners of Units to which at least sixty-five percent (65%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose.

15.2 Selection of an Alternative Resolution Process and Rejection of Litigation as a Remedy. By an Owner's purchase of a Unit and by the Association's receipt of title to any Common Element, the Owner and the Association (which, together with the Declarant, will be referred to in this Declaration as "Party" and "Parties") acknowledge that it is expressly agreeing to submit all disputes arising out of any alleged construction defect within the Community to the Dispute Resolution Process set forth in this section, and further that it is waiving certain rights, including (1) waiving the right to proceed in any action against Declarant, Declarant's representatives or its respective former and present employees, agents, officers, directors, partners, successors assigns, subcontractors and affiliates in any court; (2) waiving right to a trial by jury; and (3) waiving certain types of damages, including punitive or exemplary damages, treble damages, consequential damages, and damages for emotional distress and pain and suffering. The parties expressly recognize the many benefits of electing alternative dispute resolution, including potentially reduced costs and faster resolution of disputes. The Dispute

Resolution Process consists of the following three phases: (1) Notification, Inspection, and Neutral Evaluation, (2) Mediation, and (3) Binding Arbitration. Notwithstanding any other provision contained in this section, prior to the Association commencing the alternative dispute process described in this Section, the Association shall obtain the consent thereto of at least sixty-five percent (65%) of the Owners.

15.2.1. First Stage: Notification, Inspection, and Neutral Evaluation. Notification, Inspection and Neutral Evaluation are condition precedents to mediation and arbitration.

(a) Notification. Any Party claiming to have suffered an injury, or claiming to have discovered a defect in the construction of any portion of its Unit or the Common Elements shall file with Declarant a written notice as provided in this section within one hundred eighty (180) days after the date of the discovery of the injury, regardless of whether the Party then knew all of the elements of a claim or of a cause of action for such injury (“Notice”). Compliance with the provisions of this section shall be a condition precedent and prerequisite to any further action brought against the Declarant. Failure of compliance, pursuant to this section shall forever bar any such action. The Notice shall contain the following: (i) The name and address of the claimant and the name and address of its attorney, if any; (ii) A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of; (iii) The name and address of any person responsible, if known; (iv) A concise statement of the nature and the extent of the injury claimed to have been suffered or defect claimed; and (v) A statement of the amount of monetary damages that is being requested, and other remedy sought. Notice shall be sent to the Declarant in one of the following manners: by registered mail or upon personal service by an uninterested third party upon the Declarant as provided in the Colorado Rules of Civil Procedure Rule 4.

(b) Inspection. Within ten (10) days of receipt by Declarant of the above Notice the Declarant shall contact the complaining Party to set up an inspection of the applicable Unit or Common Element. After said inspection, the Declarant and the complaining Party(ies) shall meet to determine whether they can agree upon a course of action to address the concerns in a manner agreeable to all Parties. If the Parties cannot agree on a course of action, the Parties shall proceed to obtain a “Neutral Evaluation,” as described below.

(c) Neutral Evaluation. The Parties shall select a neutral third party “evaluator” with expertise in the area in question to come to the applicable Unit or Common Element and inspect and evaluate the claimed defects. If the Parties are unable to agree upon a single “evaluator” each

Party shall select one evaluator, and the two evaluators shall select a third. The Parties shall share equally in the evaluator(s)' fees and expenses. After selecting the evaluator(s), the evaluator(s) shall conduct an inspection and make an initial determination including (a) whether there is a defect and (b) the most appropriate remedy for the defect. The Parties shall then meet to determine whether they can agree to a course of action to address the concerns. If the dispute is not resolved, the Parties shall proceed to mediation as provided in below.

15.2.2. Second Stage: Mediation. If the dispute cannot be resolved pursuant to the proceeding set forth above, mediation is a condition precedent to any further action. The Parties shall agree upon a neutral mediator, and attend a mediation with said person. If the Parties cannot agree upon a mediator, either Party may file an action, exclusively to cause the Mesa County District Court to appoint a neutral mediator. The Parties shall share equally in the mediator's fees and expenses, and all costs related thereto.

15.2.3. Final Stage: Binding Arbitration. If mediation is not successful, and either Party wishes to pursue the dispute further, the Parties shall proceed to binding arbitration under the Uniform Arbitration Act, Part 2 of Article 22, of Title 13, C.R.S. The Parties shall select a neutral arbiter. If the Parties are unable to agree upon a single arbiter, each Party shall select one arbiter, and the two arbitrators shall select a third. The Parties shall share equally in the arbiter(s)' fees and expenses. If the two arbiters are unable to select a third arbiter, either Party may file suit for the sole purpose of asking a Court of competent jurisdiction to select the third arbiter. The Court shall be given a list of three arbiters by each Party. Arbitration shall be valid and binding pursuant to the Uniform Arbitration Act, C.R.S. § 13-22-203. In matters of construction standards, arbitrators will render a decision based upon whether the Declarant has met the NAHB Residential Construction Performance Guidelines. The arbitrator's decision will be final and binding upon the Parties who are subject to this Declaration and result in final resolution of the disputed items between the Parties. Judgment upon any award rendered by the arbitrator may be entered by any state or federal court, as appropriate. The decision of the arbitrator shall be final, and not appealable, except as provided under C.R.S. § 13-22-201, et seq.

15.2.4. Attorney Fees and Costs. If it becomes necessary for any Party to enforce this Article or to obtain redress for the violation of any provision of this Article, whether by litigation, arbitration or other proceedings, the party who substantially prevails in such matter shall be entitled to recover from the other party reasonable attorney fees, court costs, or other legal fees incurred in such litigation, arbitration or other proceedings.

15.3 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 Amended 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.

15.4 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.

15.5 Amendments. The covenants and restrictions of this Declaration shall run with and bind the land perpetually. This Declaration may be amended for any purpose whatsoever by vote or agreement of Owners of the Units to which at least sixty-five percent (65%) of the votes in the Association are allocated. Any amendment must be recorded in the real property records of the Clerk.

15.6 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.

15.7 Notice. Notice of matters affecting the Community 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 Unit. All notices, demands or other notices intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid to the president of the Association at its registered address according to the records of the Colorado Secretary of State, unless such address is changed by the Association and notice of such change is provided to all Owners at their registered mailing address.

15.8 Conflicts of Provisions. In case of conflict between this Declaration and the Association Documents, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

15.9 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration or the intent of any provisions hereof.

15.10 Association to Resolve Ambiguities. If any doubt or question shall arise concerning the true intent or meaning of any of this Declaration, the Board shall, by resolution, determine the proper construction of the provision in question and such resolution shall fix and establish the meaning, effect and application of the provision. However, this provision shall not apply to any such question concerning Declarant, unless Declarant has given its specific prior written authorization for the Board to make the determination.

15.11 Governing Law and Venue. This Declaration shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado, and venue shall be exclusively in Mesa County, Colorado.

15.12 Landscaping, Soils and Environmental Matters

15.12.1. THE ASSOCIATION SHALL MAINTAIN THE LANDSCAPING, DRAINAGE, AND SPRINKLER SYSTEMS UPON THE COMMUNITY IN SUCH A FASHION THAT THE SOIL SURROUNDING THE FOUNDATIONS OF THE BUILDINGS AND OTHER IMPROVEMENTS SHALL NOT BECOME SO IMPREGNATED WITH WATER THAT THEY CAUSE EXPANSION OF OR SHIFTING OF THE SOILS SUPPORTING THE IMPROVEMENTS OR OTHER DAMAGE TO THE IMPROVEMENTS AND DO NOT IMPEDE THE PROPER FUNCTIONING DRAINAGE, LANDSCAPING, OR SPRINKLER SYSTEMS AS ORIGINALLY INSTALLED. SUCH MAINTENANCE SHALL INCLUDE, WHERE NECESSARY, THE REMOVAL OR REPLACEMENT OF IMPROPERLY FUNCTIONING GUTTERS, DOWNSPOUTS, LANDSCAPING, DRAINAGE, OR SPRINKLER SYSTEM ELEMENTS AND SHALL ALSO INCLUDE PREVENTING PONDING AND REGRADING AND RESURFACING WHERE NECESSARY TO PROVIDE FOR ADEQUATE DRAINAGE AND PREVENTING ANY CHANGES IN LANDSCAPING IN SUCH A WAY AS TO ENDANGER THE STRUCTURAL INTEGRITY OR THE STABILITY OF ANY OF THE LANDSCAPING, WALKWAYS, WALKS, DRAINAGE OR SPRINKLER SYSTEMS, OR THE OTHER IMPROVEMENTS UPON THE COMMUNITY. THE ASSOCIATION AND THE OWNERS SHALL INDEMNIFY THE DECLARANT FROM ANY LIABILITY, CLAIMS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES, RESULTING FROM ANY BREACH OF THIS PROVISION.

15.12.2. THE OWNERS ACKNOWLEDGE AND UNDERSTAND THAT SOIL, ECOLOGICAL AND/OR ENVIRONMENTAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, RADON GAS, HAZARDOUS OR TOXIC SUBSTANCES, MAY AFFECT THIS COMMUNITY AND THAT THE DECLARANT DOES NOT WARRANT AND INSTEAD AFFIRMATIVELY DISCLAIMS ANY LIABILITY FOR ANY EXISTING OR FUTURE SOIL, ECOLOGICAL OR ENVIRONMENTAL CONDITIONS AFFECTING THE COMMUNITY, AND THAT THE SOIL IN THE COLORADO AREA CONTAINS CLAY AND OTHER SUBSTANCES WHICH MAY CAUSE IT TO SWELL WHEN WET AND SO CAN CAUSE EARTH MOVEMENT AROUND A BUILDING'S FOUNDATION; THE OWNERS ACCEPT THE SOIL CONDITIONS, THE FOUNDATIONS AND THE BUILDINGS SO INSTALLED WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS.

15.12.3. THE U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA") STATES THAT EXPOSURE TO ELEVATED LEVELS OF RADON GAS CAN BE INJURIOUS. ANY TEST TO MEASURE THE LEVEL OF RADON GAS CAN ONLY SHOW THE LEVEL AT A PARTICULAR TIME UNDER THE CIRCUMSTANCES OCCURRING AT THE TIME OF TESTING. DECLARANT, ITS

AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS ARE NOT QUALIFIED TO MEASURE RADON GAS OR TO EVALUATE ALL ASPECTS OF THIS COMPLEX AREA OF CONCERN. PRIOR OR SUBSEQUENT TO CLOSING OF THE OWNERS'S PURCHASE OF THE UNIT, THE OWNER MAY WISH TO TEST FOR THE PRESENCE OF RADON GAS AND TO PURCHASE OR INSTALL DEVICES THAT MAY BE RECOMMENDED BY QUALIFIED RADON SPECIALISTS. THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, EXPRESSLY DISCLAIM AND THE OWNER AND THE ASSOCIATION AGREE TO WAIVE AND RELEASE THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, FROM ANY CLAIM OF LIABILITY OR RESPONSIBILITY WITH RESPECT TO RADON GAS AND RELATED MATTERS AND TO HOLD HARMLESS FROM ANY CLAIMS OR LIABILITY AGAINST THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS OR ASSIGNS WITH RESPECT TO RADON GAS AND RELATED MATTERS.

15.12.4. FIBERGLASS INSULATION (ALSO KNOWN AS GLASS WOOL) IS COMMONLY USED FOR INSULATION OF BUILDINGS, FIBERGLASS IN VARIOUS THICKNESSES AND VALUES IS USED IN THE AREAS OF WALLS, FLOOR TO CEILING, ASSEMBLIES AND CEILING TO ROOF ASSEMBLIES OF BUILDINGS TO PREVENT MOVEMENT OF HEAT AND TO REDUCE NOISE. THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRODUCED A REPORT THAT LISTS GLASS WOOL AS A SUBSTANCE "WHICH MAY BE REASONABLY ANTICIPATED TO BE A CARCINOGEN," BUT THAT REPORT MERELY IDENTIFIES SUBSTANCES SELECTED FOR FURTHER STUDY BECAUSE OF POTENTIAL RISK. THE LISTING OF A SUBSTANCE IN THE REPORT IS NOT AN ASSESSMENT THAT THERE IS A CASUAL CONNECTION BETWEEN GLASS WOOL AND ILLNESS. THE OWNERS AND THE ASSOCIATION ACKNOWLEDGE THAT FIBERGLASS IS USED IN THE WALL AND FLOOR TO CEILING ASSEMBLIES, AND WAIVE ANY CLAIMS AGAINST THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, ARISING AS A RESULT OF THE USE OF FIBERGLASS INSULATION, AND AGREES TO HOLD DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM THE EXISTENCE OF FIBERGLASS INSULATION IN THE UNITOR THE COMMUNITY.

15.12.5. THE ASSOCIATION AND THE OWNERS AGREE TO DO NOTHING WHICH WOULD CHANGE THE GRADING OR LANDSCAPING SO AS TO CAUSE OR PERMIT POOR DRAINAGE OR OTHER DAMAGE TO THE BUILDINGS, TO ACCEPT THE SOIL CONDITIONS, LANDSCAPING, INSULATION, RADON, ECOLOGICAL AND ENVIRONMENTAL CONDITIONS, WHICH NOW OR HEREAFTER EXIST ON THE COMMUNITY, AND TO

RELEASE AND INDEMNIFY THE DECLARANT FROM ANY LOSS, DAMAGE AND EXPENSE RESULTING FROM ANY OF THE FOREGOING.

15.13 Disclosures, Disclaimers and Releases. NO REPRESENTATION, PROMISE OR WARRANTY, HAS BEEN MADE BY DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, REGARDING THE DEVELOPMENT OF ADJACENT PROPERTIES TO THE INVESTMENT POTENTIAL OF THE UNITS, ANY ECONOMIC BENEFIT TO THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, TO BE DERIVED FROM THE MANAGERIAL OR OTHER EFFORTS OF DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, OR ANY OTHER THIRD PARTY DESIGNATED OR ARRANGED BY THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, RELATED TO THE OWNERSHIP OR RENTAL OF THE UNITS, OR REGARDING THE CONTINUED EXISTENCE OF ANY VIEW FROM THE UNITS. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, ARE UNDER NO OBLIGATION WITH RESPECT TO FUTURE PLANS, ZONING OR DEVELOPMENT OF ADDITIONAL COMMUNITY IN THE AREA. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT THE SIZES AND TYPE OF BUILDINGS IN THE COMMUNITY MAY CHANGE AT THE SOLE DISCRETION OF THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, AND THAT THE SALES PRICES MAY DECREASE OR INCREASE AT THE SOLE DISCRETION OF DECLARANT.

BY ACQUIRING TITLE TO A UNIT, THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT EXCEPT FOR ANY WRITTEN LIMITED WARRANTY, THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE BUILDINGS, THE COMMUNITY, OR ANY IMPROVEMENTS RELATED THERETO OR ANY ELECTRICAL, PLUMBING, HEATING, GAS, WATER, SEWER, STRUCTURAL COMPONENTS, OR OTHER MECHANICAL OR UTILITY SYSTEMS OR COMPONENTS OR APPLIANCES OR FIXTURES RELATED THERETO. THE OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS FROM ALL CLAIMS RELATED THERETO, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, COMMUNITY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

THE OWNERS, THEIRS HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION COVENANT AND AGREE THAT THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS SHALL NOT BE LIABLE FOR CLAIMS



**Exhibit A**  
Initial Property

Lots 1 through 48, inclusive, and  
Tracts A, B, C, D, E, F, and G

Copper Creek West Filing 1

Mesa County, Colorado

**Exhibit B**  
Annexable Property

Lot 200

Copper Creek West Filing 1

Mesa County, Colorado