

***THIS DECLARATION REVOKES, SUPERSEDES AND IS TO SUBSTITUTE FOR THAT CERTAIN DECLARATION OF GRACE PARK CONDOMINIUM NO. 1, RECORDED ON NOVEMBER 16, 1982, IN BOOK 1400 AT PAGES 487-497, WHICH IS HEREBY DECLARED NULL AND VOID.***

**CONDOMINIUM DECLARATIONS  
OF  
GRACE PARK FILING NO. 1 CONDOMINIUMS**

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, Christian Brothers Construction, a Colorado limited partnership, hereinafter referred to as "Declarant", is the owner of the real property situated in the County of Mesa, State of Colorado, more particularly described as Exhibit A (hereinafter referred to as the "Real Property"); and

WHEREAS, Declarant desires to establish under the Condominium Ownership Act of Colorado and by this Declaration a plan for the ownership in fee simple of real property estates consisting of the area or air space contained in each of the apartment units in the building improvements and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining real property which is hereinafter defined and referred to as the Common Elements;

NOW, THEREFORE, Declarant does hereby publish and declare that the real property, buildings, and improvements constructed and located thereon, are hereby submitted and dedicated to condominium use and ownership as set forth herein and the following terms, covenants, conditions, easements, and restrictions, uses, limitations, and obligations shall be deemed to run with the land, shall be a burden and benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees,, or assigns.

1. Definitions.

- a) Unless the context shall expressly provide otherwise, the terms used herein shall have the following meaning: "Unit" means an individual air space which is to be used for residential purposes, which is contained within the windows, doors (in their closed position) and the unfinished perimeter walls, floors, and ceilings of each unit shown on the condominium map to be filed for record, together with all fixtures and improvements therein contained including a fireplace, if any, but not including any structural components of the building or other portions of the Common Elements, if any, located within the unit, and together with an easement for vehicular and pedestrian ingress and egress across the Common Elements between the unit and the nearest public street.
- b) "Building" means the several buildings containing the units as shown on the map.
- c) "Condominium Unit" means the fee simple interest in title in and to a unit, together with the individual interest in the Common Elements appurtenant to such unit and all other rights and burdens created by this Declaration.
- d) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more condominium units but excluding, however, any such person having an interest therein merely as a mortgagee (unless such mortgagee has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).
- e) "Common Elements" means and includes all the land described in Exhibit "A" and all the improvements thereto and located thereon excluding condominium units. Common Elements shall be owned, as tenants in common, by the owners of the separate units, each unit having an undivided fractional interest in such common elements as in hereinafter provided. Common Elements consist of:
  - 1. "General Common Elements" means and includes the land described in Exhibit "A"; the structural components of the buildings, including, but not limited to the foundation,

girders, beams, supports, roof and main wall; the yards, gardens, irrigation system, parking spaces, streets; grouped installation of central services, such as power, light, gas, hot and cold water, heating and such as power, light, gas, hot and cold water, heating, and common area air conditioning, the improvements and portions of the buildings and areas therein as are provided for the community use; and all other parts of such land and improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in general common use, including the air above such land. (The definition of General Common Elements includes: (1) reference to specific elements all of which are not necessarily required to be constructed within the project. If they are constructed they are to be general common elements.)

2. "Limited Common Elements" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of an owner or are limited to and reserved for the common use of more than one but fewer than all of the owners as shown on the map, which shall include by way of illustration and not limitation, patios, balconies, assigned mailboxes, and attached storage facilities, which are specifically designated as being appurtenant to a particular unit.
- f) "Project" or "Condominium Project" means and includes all of the land, the buildings, all improvements and structures thereon and all rights, easements and appurtenances belonging thereto submitted by this Declaration.
  - g) "Common Expenses" means and includes (I) expenses of administration, of operation and of management, of maintenance, repair or replacement of the Common Elements; (ii) expenses declared Common Expenses by the Association; (iii) all sums lawfully assessed against the Common Elements by the Board of Managers of the Association; and (iv) expenses agreed upon as Common Expenses by the Association of unit owners.
  - h) "Association of Unit Owners" or "Association" means the Grace Park Condominium Association, Inc., a Colorado corporation not for profit, its successors and assigns, the Articles and Bylaws of which

shall govern the administration of this Condominium Project, the members of which shall be all of the owners, including the Declarant.

- I) "Map", "Condominium Map", or "Supplemental Map" means and includes the engineering survey of the land depicting and locating thereon all of the improvements including individual air space units; the floor and elevation plans and any other drawing of diagrammatic plan depicting a part of or all of the improvements and land which are included in this condominium project. Declarant reserves the right to amend the map, from time to time, to conform to same according to the actual location of any of the constructed improvements and to establish, vacate or relocate easements, and on-site parking areas.
- j) "Mortgage" shall mean any mortgage, deed of trust or other document pledging a condominium unit as security for the payment of a debt or obligation.
- k) "Mortgagee" shall mean any person, corporation, partnership, trust, company, association or other legal entity which takes, owns, holds or other legal entity wh takes, owns, holds or receives a Mortgage.
- l) "Declaration" means this document, together with all exhibits attached hereto, which document shall be recorded pursuant to Colorado Revised Statutes, as amended.
- m) "Bylaws" means the Bylaws of the Association, the provisions of which are applicable to the project.
- n) "Articles" means the articles of incorporation of the Association, the provisions of which are applicable to the project.
- o) "Guest" means any agent, employee, tenant, guest, licensee, or invitee of an owner.
- p) "Board" or "Board of Managers" means the governing body of the Association.
- q) "Managing Agent" means the person employed by the Board to perform the management and operational functions of the project.

2. Limited Common Elements:

Subject to the definition thereof, the Limited Common Elements shall be identified on the map. Any patio, balcony, and attached storage facility, which is accessible only from, associated with and which adjoins a unit shall, without further reference thereto, be used in connection with such unit to the exclusion of the use thereof by the other owners of the common elements, except by invitation, and shall be designated a Limited Common Element, together with the mailbox designated for such unit. All of the owners of the condominium units in this condominium project shall have a non-exclusive right in common with all of the other owners to the use of sidewalks, recreational facilities, streets and drives located within the entire condominium project. No General or Limited Common Element shall be leased to the owners or to the Association, nor shall the Common Elements be subject to the Association, nor shall the Common Elements be subject to any other restriction in favor of the Declarant or any other restriction in favor of the Declarant or any affiliate of the Declarant. In addition to rights of use herein described and elsewhere described in this Declaration, the Association, its Board of Managers and its Managing Agent shall have an unrestricted, irrevocable easement to traverse, cross and utilize any portion of the Common Elements which may be necessary in order to maintain, repair or replace any Common Elements.

Except as specifically herein above required, no reference thereto (whether such Limited Common Elements are exclusive or non-exclusive), need be made in any instrument of conveyance or other instrument in accordance with Paragraph 7 of this Declaration.

3. **Parking Spaces:**

Each owner shall have the right to use two (2) parking spaces for his unit and shall also have a co-equal right to use the community parking for guests and any additional owners' parking. All parking shall be assigned by and be under the control of the Association, and the use thereof shall be subject to the rules and regulations adopted by the Board of Managers of the Association. Each owner shall be responsible for keeping his two (2) assigned parking spaces clear of snow, debris and other obstructions. See Page 4(a).

4. **Division of Property Into Condominium Units:**

A. The real property described in Exhibit A including the improvements thereon is hereby divided into 12 (twelve) fee simple estates

(condominium units). Each such estate shall consist of a separately designated unit and the undivided interest in and to the Common Elements appurtenant to such unit as set forth on Exhibit B attached hereto and incorporated by reference herein, which undivided interest may never be increased, but may be decreased based upon the number of annexations and enlargements of the project pursuant to Paragraph 36 hereof. Each condominium unit's appurtenant percentage of interest in the Common Elements shall never be less than .96154 nor more than 8.334.

- B. In addition to the initial six (6) phases of the condominium project and subject to the limitations and requirements herein set forth, the Declarant shall have the absolute right, but not the obligation, to be exercised prior to seven (7) years from the date of recording this declaration, to annex to the land and improvements described herein and thereby to submit to all of the provisions of this Declaration and the Condominium Act, the land described as follows:

All that part of the N ½ NW 1/4 SW 1/4 of Section 16, Township 1 North, Range 2 West of the Ute Meridian, lying North and East of the Grand Valley Irrigation Company Canal; excepting the North 20 feet of the NW 1/4 NW 1/4 SW 1/4 of Section 16, used as a road, together with 4 shares of capital stock of the Grand Valley Irrigation Company and together with an undivided 20% of all oil, gas, and other minerals, whether metalliferous or non-metalliferous, together with the right of ingress and egress for the purpose of exploitation of same upon just compensation for surface damage, Mesa County, Colorado;

Together with improvements heretofore or hereafter constructed upon any of such land, as each such parcel of land and such improvements may be delineated on an amended condominium map. Subject to the limitations herein, the Declarant shall have the right, but not the obligation to annex any or all of said parcels to the land and improvements already subject to this Declaration. Any such expansion or annexation shall be accomplished by the recordation with the Clerk and Recorder's office of Mesa County, Colorado, of an amendment to this Declaration and the condominium map.

On the recordation of an amendment or Supplemental Declaration to this Declaration and to the condominium map for the purpose of annexing the above referenced property in Mesa County, Colorado, together with the improvements heretofore or hereafter constructed thereon, each unit owner shall have an undivided percentage interest in the common elements and common expenses equal to the percentage obtained by dividing 100 by the number of total units installed on the property described in "Exhibit A" and/or "Exhibit C", and the above referenced property in Mesa County, Colorado, prior to seven (7) years from the date of recording this Declaration. On the recordation of such amendment, the percentage interests here and elsewhere provided for shall be reallocated. Any deed for any condominium unit in the condominium shall be delivered subject to these declarations and because of such, are subject to a conditional limitation that the percentage interests appurtenant to such condominium unit shall be automatically reallocated *protanto* on the recordation of such amendments.

There is hereby reserved unto the Declarant an irrevocable power of attorney, coupled with an interest, for the purpose of reallocating the percentage interests and voting rights appurtenant to each of the condominium units in the condominium in accordance with the provisions of this Declaration, and the Articles of Incorporation and Bylaws of Grace Park Condominiums Homeowners Association, and to execute, acknowledge, and deliver such further instruments as may from time to time be required in order to accomplish the purposes of this subparagraph. Each owner and each mortgagee of a condominium unit in the condominium shall be deemed to have acquiesced in the amendments to this Declaration and in amendments to the condominium map for the purposes of adding additional condominium units, and common elements and limited common elements to the condominium in the manner set forth in this Article, and shall be deemed to have granted unto the said Declarant and irrevocable power of attorney, coupled with an interest, to effectuate, execute, and acknowledge and deliver any such amendments; and each such unit owner and mortgagee shall be deemed to have agreed and covenanted to execute such further instruments, if any, as may be required by the Declarant, their successors or assigns, to properly accomplish such amendments. Any improvements upon land annexed hereby shall be constructed of comparable style, floor plan, size and quantity of the original structures developed. Notwithstanding the foregoing, any annexation of additional lands is subject to the prior written consent of all mortgages.

5. Inseparability of a Condominium Unit, No Restriction on Transfer:

Each unit and the undivided interest in the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased, rented or encumbered only as a condominium unit. There shall be no right of first refusal or similar restriction in favor of the Declarant, the Association, or the owners upon any condominium unit.

6. Non-Partitionability of General Common Elements:

The Common Elements shall be owned in common by all of the owners of the units and shall remain undivided. By the acceptance of his deed or other instrument of conveyance or assignment, each owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements and each owner specifically agrees not to institute any action therefore. Further, each owner agrees that this Paragraph 6 may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs and other damages the Association incurs in connection therewith.

7. Description of Condominium Unit:

- A) Every contract for the sale of a condominium unit written prior to the recordation of the map and this Declaration may legally describe a condominium unit by its identifying unit designation, followed by the words "Grace Park Filing No. 1 Condominiums". The location of such condominium unit shall be depicted on the map subsequently recorded. Upon recordation of the condominium map in the County of Mesa, Colorado, real estate records such description shall be conclusively presumed to relate to the thereon described condominium units.
- B) After the condominium map and this Declaration have been recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado, every contract, deed, lease, mortgage, trust deed, will or other instrument shall legally describe a condominium unit as follows:

Condominium Unit No. \_\_\_\_\_, Grace  
Park Filing No. 1 Condominiums, a Condominium

In accordance with the Declaration recorded on \_\_\_\_\_, 198\_\_\_\_, in Book \_\_\_\_\_  
At Pages \_\_\_\_\_, and Condominium  
Map recorded on \_\_\_\_\_, 198\_\_\_\_,  
In Book \_\_\_\_\_ at Page \_\_\_\_\_, of the  
County of Mesa records.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect only the unit, but also the undivided interest in the Common Elements appurtenant to said unit and all other appurtenant properties and property rights, and shall incorporate all of the rights and burdens incident to ownership of a condominium unit and all of the limitations thereon as described in this Declaration and Condominium Map. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from an owner's unit to the nearest public street, and the use of all of the Limited Common Elements appurtenant to said unit as well as all of the General Common Elements.

- C) The reference to the map and declaration in any instrument shall be deemed to include any supplements or amendments to the map or declaration, without specific reference(s) thereto.

8. **Ownership Title:**

A condominium unit may be held and owned by more than one person as joint tenants, or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

9. **Separate Assessment and Taxation - Notice to Assessor:**

Declarant shall give written notice to the assessor of the County of Mesa, State of Colorado, of the creation of condominium ownership of this property as is provided by law, so that each condominium unit shall be deemed a separate parcel and subject to separate assessment and taxation.

10. **Use of General and Limited Common Elements:**

Each owner may use the Limited Common Elements and the General Common Elements with the other condominium unit owners, and in

accordance with the purpose for which they are not intended. The Association may adopt rules and regulations governing the use of General and Limited Common Elements, provided such rules and regulations shall be uniform and non-discriminatory. Each owner, by the acceptance of his deed or other instrument or conveyance or assignment, agrees to be bound by any such rules and regulations.

All public safety and fire protection emergency services vehicles of governmental authorities having jurisdiction over the project, together with all ambulance services, and hereby authorized to use the private streets in the project.

11. Use and Occupancy:

- A) Each unit shall be occupied and used only as and for a single family residential dwelling for the owner, his family or his guests, or tenants; provided, however, the Declarant and its employees, representatives, agents and contractors may maintain business and sales offices, construction facilities and yards, model units and other facilities on the project during the period of sales of any units of any phase of the project, not to exceed seven (7) years from the date of recording of this Declaration. Notwithstanding the above, the Association may use any residence for any on-site resident manager or custodian. No unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence each unit shall be deemed to have been designed to accommodate safely a maximum of two (2) permanent adult occupants per bedroom.
  
- B) Each parking space shall be used only for the parking of motor vehicles owned and operated by an owner, his family or his guests, or tenants; provided, however, the Declarant and its employees, representatives, agents and contractors may use parking spaces not assigned to an owner. Notwithstanding the above, the Association may assign any parking space not assigned to an owner for any on-site resident manager or custodian. No parking space shall be used for commercial purposes, nor for the repair of motor vehicles other than for the incidental repair (for a period no longer

than seventy-two (72) hours, of the motor vehicles owned and operated by an owner, his family or his guests, or tenants. The Association shall have the authority to adopt rules and regulations for the use of parking spaces for such incidental repairs to motor vehicles. Under no circumstances shall a parking space be used for the extended storage of inoperative vehicles or the rebuilding of a motor vehicle, without the prior written consent of the Board, or its managing agent. No parking spaces shall be leased to owners or to the Association except for the proposed recreational vehicle parking area referred to in Article 3(a) of this Declaration.

No parking shall be permitted on any street within the project unless specifically designated for parking by the Association. Without limiting the generality of the powers of the Association with respect to parking, the Association is hereby specifically authorized to have any vehicle parked in an area not designated for parking immediately removed at the expense of the owners of the unit who own such vehicle or whose guests, tenants or invitees own such vehicle. The expenses incurred by the Association in accomplishing such removal (and storage, if necessary) shall become a portion of the Common Expense levied against such owners and their unit.

No owner shall park, store or keep anywhere on the property any large commercial type vehicle. No owner shall park, store or keep any recreational vehicle (including, but not limited to, any camper unit, house car or motor home), inoperable vehicle or any other similar vehicle anywhere on the property, except where permitted. In addition, no owner shall park, store or keep anywhere on the property any vehicle or vehicular equipment, mobile or otherwise deemed to be a nuisance by the Board. Only passenger motor vehicles may be parked in the parking spaces which are a part of each lot or on portions of the Common Area designated for parking by the Association. There shall be no parking in the driveway if to do so obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. The Association, through the Board and its agents, is hereby empowered to establish "parking", "Guest parking" and "no parking" areas within the property. Restoring or repairing vehicles shall not be permitted anywhere on the property. Any additional parking spaces which may constitute a part of the common property shall be subject to reasonable control and use limitation

by the Board of Directors. The Association, to the extent permitted by law, shall have the right to enforce all parking restrictions pertaining to any publicly dedicated streets within the properties and to remove any vehicles of owners, their guests and invitees, at such owner's expense, without damage or liability therefore. In the event a recreational vehicle storage facility is constructed on the Common Area, an owner shall be permitted to use such facility for the storage of a personally owned recreational vehicle, subject to the payment of a reasonable fee to the Association. No other recreational facilities are contemplated by Declarant.

12. Easements for Encroachments:

In the event that any portion of the Common Elements encroaches upon any other unit, or upon any portion of the unit or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future, as a result of: (I) construction, reconstruction, shifting, movement, or settling of any one of the buildings; or (ii) construction, reconstruction, shifting, movement, alteration or repair to the Common Elements; or (iii) repair or restoration of the buildings or units, after damage by fire or other casualty, or condemnation or eminent domain proceedings; a valid easement not exceeding one (1) foot shall exist for the encroachment and for the maintenance of the same so long as the building stands. In the event that any one or more of the units, or the building or other improvements comprising part of the Common Elements are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment not exceeding one (1) foot shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the units for purposes of marketability of title or other purposes.

13. Mechanic's Lien Rights and Indemnification:

No labor performed or materials furnished and incorporated in a unit with the consent of or at the request of the owner thereof or his agent, or his contractor or sub-contractor, shall be the basis for filing of a lien against the condominium unit of any other owner not expressly consenting to or requesting the same. Each owner shall indemnify and hold harmless each

of the owners from and against all liability arising from the claim of any lien against the condominium unit of any other owner for construction performed, or for labor, materials, service or products incorporated in the owner's unit at such owner's express or implied request. The provisions herein contained are subject to the rights of the Association as set forth in Paragraph 16.

**14. Nuisances:**

No nuisances shall be allowed or permitted upon the project or any property in which the Association owns an interest, nor shall any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed or permitted to exist. No owner shall make or permit any use of his unit, or make or permit any use of the common elements or any property in which the Association owns an interest which will increase the cost of insurance on the property.

No immoral, improper, offensive or unlawful use shall be made of the project or any property in which the Association owns an interest, nor any part thereof, and all valid laws, zoning and other ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

**15. Administration and Management:**

The administration of this Project shall be governed by this Declaration, the Articles and the Bylaws of the Grace Park Condominium Association, a Colorado corporation, not for profit, hereinafter referred to as the "Association". An owner of a condominium unit shall become a member of the Association upon conveyance to him of his condominium unit and shall remain a member for the period of his ownership. As shown and reserved in the Articles of Incorporation and Bylaws for the Association, the designation and appointment of a Board of Managers for a period until one hundred twenty (120) days after completion of conveyance from Declarant to owners of title to seventy-five percent (75%) of the then declared and existing units or until seven (7) years after the recording of this Declaration, whichever occurs first, has been or will be exercised by the Declarant.

The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the project and to perform all of the duties required of it.

16. **Reservation for Access - Maintenance, Repair and Emergencies:**

The Association shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repairing or replacement of the Common Elements therein, or at any time for making emergency repairs therein necessary to prevent damage to the General or Limited Common Elements or to another unit, at the instance of the Association, shall be a Common Expense of all of the owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of a governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any owner, then such owner shall be solely responsible for the costs and expense of repairing such damage.

17. **Maintenance and Service Responsibility:**

A) **Owner:**

1. For maintenance purposes an owner shall be deemed to own the interior non-supporting walls, floors and ceilings of his unit, and fireplace, if any; the materials such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring, and other materials which make up the finished surfaces of the perimeter walls, ceiling and floors within the unit; but not including the pipes, wire, conduits or systems (which are General Common Elements and for brevity are herein and hereafter referred to as "utilities") running through his unit which serve one or more other units except as a tenant in common with the other owners. Such utilities shall not be disturbed or relocated by an owner without the written prior consent and approval of the Board of Managers, and any such alteration, relocation, enlargement, addition or modification shall be at

the owner's expense, which expense shall include all expenses incurred by the Association in reference thereto.

2. An owner shall maintain and keep in repair the interior of his unit, including the fixtures, doors, windows and utilities located therein to the extent current repair shall be necessary in order to maintain the appearance of the project and to avoid damaging other condominium units. All fixtures, equipment and utilities installed within the unit commencing at a point where the fixtures, equipment and utilities enter the unit shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness of the improvements or impair the proper functioning of the utilities, heating, air conditioning, if any, or plumbing systems or integrity of the building or impair any easement or hereditament. An owner shall always keep the front stoop, balcony and patio area adjoining and appurtenant thereto, in a clean, orderly and sanitary condition, free of all snow, debris and other obstructions. The owner of a unit shall be responsible for replacing the light bulbs of exterior light fixtures attached to his unit, together with the cost of the electricity for such lights, and for maintenance, repair and replacement of the mailbox for his unit.
3. If repairs or maintenance of a common element needs to be done at a point said element abuts another owner's unit or an element which said owner would be required to repair at his expense pursuant to this Article, the maintenance and repair of such element at such point and within a reasonable distance therefrom shall be a joint expense of the two units contained within said building, provided that prior to undertaking any repair or maintenance the respective unit owners first agree upon the necessary repair or maintenance and cost.

If no agreement is reached between the two units regarding joint or singular responsibility or the appropriate percentage portion of each owner therefore for repairs and maintenance or the cost to be expended therefore, the issue(s) shall be submitted to the Association by either unit owner. The decision of the Association, acting through a majority vote of

all the members shall be final. If a majority vote does not exist at the meeting at which the issue is presented, the expense shall be a joint expense, the appropriate percentage portion of responsibility for such repair or maintenance to be fifty (50) percent for each unit, and the cost shall be determined by the actual cost incurred to repair or maintain. Each owner may proceed with appropriate court action to collect any sums due from the other unit owner, to which sum shall be added a reasonable attorney's fee and court costs to be fixed by the court. If a quorum of the Association members cannot be obtained for two consecutive meetings, the owner or owners may proceed through appropriate court action to have the issue(s) determined.

B) Association:

1. The Association shall have the duty of maintaining and repairing all of the Common Elements, subject to the provisions in Paragraph 17(A)(2), within the project and the cost of said maintenance and repair shall be a Common Expense of all of the owners. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; provided, however, there shall be no additions, alterations or improvements of or to the Common Elements requiring an expenditure in excess of One Thousand Five Hundred Dollars (\$1,500.00) per expenditure nor in excess of Three Thousand Dollars (\$3,000.00) in the aggregate in any one calendar year without the prior approval of owners representing a majority of the units. Such limitation shall not be applicable to the replacement, repair maintenance or obsolescence of any General Common Element or common property.
2. The Association shall provide to the owner the following services which shall be paid for out of the Common Expense assessment, to wit:
  - a) exterior painting and other exterior maintenance and repairs;

- b) administration and management of the project, including without limiting the generality of the foregoing, the following:
  - 1) enforcement of the covenants, conditions and restrictions set forth in the Declaration, Articles, Bylaws, and Association Rules and Regulations, together with enforcement of all obligations owed to the Association by the owners.
  - 2) acting as attorney in fact in the event of damage or destruction as provided for in Paragraph 28 hereof, and
- c) inspection, maintenance, and repair of private streets and parking areas, private walkways, private street and walkways lighting, lawns and shrubbery;
- d) snow removal (except as provided in Paragraph 3 and 17 (A)(2)); and
- e) irrigation and potable water.

Notwithstanding the above, the Association reserves the right to hire one or more persons or entities, including a Managing Agent, contractors and employees to perform such services provided; however, that any such contracts shall not be for a term of one (1) year and shall provide that the same may be terminated on thirty (30) days written notice, with or without cause, at any time by either party and without payment of any termination fee. Such contracts may be renewable, upon agreement of the parties, for successive one (1) year periods.

- 3. In the event the Association shall fail, after receiving thirty (30) days prior written notice from the County of Mesa to commence and diligently perform within a reasonable period of time its maintenance obligations for the project, then

upon and additional ten (10) days prior written notice to the Association and to each unit, the County of Mesa shall have the right but not the duty to perform such maintenance obligations on behalf of such performance by the County within ninety (90) days of presentation of the itemized statement of services provided by Mesa County. If such statement of services is not paid within such ninety (90) day period the County shall be entitled to lien upon the project for the value of such services provided by or through the County with the power of sale pursuant to a judicial foreclosure and sale of the project as in the case of a judicial foreclosure of mortgages under Colorado law.

18. Compliance with Provisions of Declaration, Articles, Bylaws and Regulatory Agreement:

Each owner, by acquiring an interest in a condominium unit, agrees to comply strictly with the provisions of this Declaration, the Articles, the Bylaws, the Regulatory Agreement, and the decisions, resolutions, rules and regulations of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Each owner agrees that failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorney's fees and costs incurred in connection therewith, which action shall be maintainable by the Association's Board of Managers in the name of the Association on behalf of the owners, or, in a proper case, by an aggrieved owner. Without limiting the generality of the foregoing, each owner assumes a personal obligation to pay all assessments properly levied against such condominium unit, as set forth in Paragraph 20 below.

19. Owner Revocation or Amendment to Declaration:

- A) Subject to the mortgage approval provisions set forth in Paragraph 27, this Declaration shall not be revoked unless two-thirds (2/3) of each class of members of the Association who are voting in person or by proxy consent and agree to such revocation by instrument duly recorded. This Declaration shall not be amended unless at least two-thirds (2/3) of each class of members of the Association who are voting in person or by proxy consent and agree to such amendment by an instrument duly recorded. The undivided interest in the Common Elements appurtenant to each unit, as

expressed in the Declaration and all supplements thereto and in any redetermination of such interests duly recorded pursuant to Paragraph 36, shall not be decreased without the consent of two-thirds (2/3) of the unit owners and fifty-one percent (51%) of the mortgagees as expressed in an amended Declaration duly recorded, although such interest in the Common Elements may be increased if all of the additional condominium units, are not created, as set forth under Paragraph 36 concerning annexations. In determining whether the appropriate percentage of mortgagee approval is obtained when so required by the terms of this Declaration, each mortgagee shall have one (1) vote for each mortgage owned.

- B) At least thirty (30) days prior to the effective date of any amendment to this Declaration, the Association shall notify the holders of all recorded first mortgages of such amendment.

20. Assessment for Common Expenses:

- A) All owners shall be obligated to pay the estimated assessments by the Association to meet the Common Expenses attributable to the property included in this Declaration. The assessment shall be made equally to each unit. The Limited Common Elements shall be maintained as General Common Elements and owners having exclusive use thereof shall not be subject to any special charges or assessments (except, however, this provision shall not impose upon the Association the obligation to clean or sweep, or remove snow from any of the Limited Common Elements). There shall be no division of the assessment charge between General and Limited Common Elements. Assessments for the estimated Common Expenses, including, at the option of the Association, insurance shall be due and payable monthly in advance on the first day of each month. Assessments shall be delinquent and interest thereon at eighteen percent (18%) per annum shall commence effective the day after the due date. The Association shall prepare and deliver to each owner periodic statements for the estimated expenses.

Assessments shall commence on the conveyance of the first unit to an owner by Declarant. Assessments on units owned by Declarant shall, notwithstanding anything to the contrary in the preceding, be at a rate equal to twenty-five percent (25%) of the assessment

rate. When a unit under the Declarant's control becomes occupied, the Declarant shall be required to be charged at a rate equal to the full assessment on that unit. Declarant shall also, however, underwrite any difference between actual expenses of the Association and assessments levied (subject to annual assessment increases as determined in Section 3(a) until Association control passes to Class A members. Upon conveyance of a unit, to a unit owner, Declarant agrees to pay to the Association a sum equal to 3 months of the regular unit assessment for purposes of finding a working capital fund for the Association.

- B) If the ownership of a condominium unit commences on a day other than the first day of a month, monthly assessments with respect to such unit shall commence on the first day of the next month following the date such ownership commences.
- C) The assessments made for the Common Expenses shall be based upon the estimated cash requirements deemed to be the aggregate sums the Association shall from time to time determine is to be paid by all of the owners including Declarant, to provide for payment of all estimated expenses growing out of or connected with maintenance and operation of the Common Elements which sum may include among other things, expenses of management; taxes and special assessments until separately assessed, if assessed by the Association; fire insurance with extended coverage and vandalism and malicious mischief insurance with endorsements attached in the amount of the maximum replacement value of all of the condominium units, including all fixtures, interior walls and partitions decorated and finished surfaces of perimeter walls, floors and ceilings, doors and windows and elements or materials comprising a part of the unit; casualty and comprehensive public liability and other insurance premiums; landscaping and care of grounds; lighting for common areas; repairs and renovations; wages; water charges; legal and accounting fees; managements fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of reasonable contingency or other reserve, sinking or surplus funds; as well as other costs and expenses relating to the Common Elements.
- D) The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver,

modification or a release of the owners from their obligations to pay the same.

- E) The Association shall be obligated to establish a reserve fund for the maintenance, repair and replacement of those Common Elements that must be replaced periodically and such reserve fund shall be funded through the monthly payments of the Common Expenses and not by extraordinary special assessments.
- F) The portion of Common Expense assessments allocated to the payment of the Association blanket insurance policies shall be set aside in a special escrow account to be used solely for payment of such insurance policy premiums.
- G) Until January 1 of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment shall be Four Hundred Twenty Dollars (\$420.00) per unit:
  - 1. From and after January 1, of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment may be increased effective January 1, of each year without a vote of the owners either (i) in conformance with the rise, if any, of the All Items category of the Denver Consumer Price Index (published by the Department of Labor, Washington, D.C.) For the preceding month of July, or (ii) not more than five percent (5%) above the maximum annual assessment for the previous year, whichever is greater.
  - 2. From and after January 1 of the year immediately following the conveyance of the first unit to an owner, the maximum annual assessment may be increased above that established by Subparagraph (G)(1) above by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
  - 3. The Board of Managers may fix the annual assessment at an amount not in excess of the maximum.
- H) Special Assessments.

In addition to the regular assessments authorized by this

paragraph, the Association may levy, in an assessment year, a special assessment, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of the capital improvements or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. This section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof. Any amounts assessed pursuant hereto shall be assessed equally to each of the units. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the owners, and No payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment, and any installment thereof, shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

21. Voting Class:

The Association shall have two classes of voting membership:

A) Class A.

Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to vote one (1) vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any unit.

B) Class B.

The Class B members shall be the Declarant and shall be entitled to three (3) votes for each unit owned. With respect only to the units then declared (and without prejudice to the Declarant's right to three (3) votes per unit with respect to additional units, if any, thereafter declared annexed pursuant to Paragraph 36), the Class B membership, shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

1. 120 days from the date when the total votes currently outstanding in the Class A membership equal the total votes currently outstanding in the Class B membership; or
2. Seven (7) years from the date of recording of this declaration; or
3. A redetermination of the interests of the units in the Common Elements pursuant to Paragraph 36 (E)(2) or (E)(3).

22. Insurance:

A) The Board of Managers of the Association shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates established by the Colorado Insurance Commission, and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of Class VI or better, covering the risks set forth below. The Board of Managers of the Association shall not obtain any policy where: (I) under the terms of the insurance company's charter, bylaws or policy, contributions of assessments may be made against the mortgagor, mortgagee or mortgagee's designee; or (ii) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the company's Board of Directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds. The types of coverages to be obtained and risks to be covered are as follows, to wit:

1. Fire insurance with extended coverage and all risks endorsements which endorsements shall include endorsements for vandalism, malicious mischief, sprinkler

leakage, debris removal, cost of demolition, windstorm and water damage. Said casualty insurance shall insure the entire condominium project and any property, the nature of which is a Common Element (including all of the units, fixtures therein initially installed by the Declarant but not including furniture, furnishings or other personal property supplied by or installed by unit owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation. The policy shall have an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement. All policies shall be in amounts satisfactory to all first mortgagees, and shall contain a standard non-contributory mortgagee clause in favor of each first mortgagee of a condominium unit, which shall provide that the loss if any, thereunder, shall be payable to the Grace Park Filing No. 1 Condominium Association for the use and benefit of first mortgagees as their interests may appear. All policies of property insurance must provide that, despite any provisions giving the insurance carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association.

2. Comprehensive public liability and property damage insurance in such limits as the Board of Managers of the Association may from time to time determine, but not in an amount less than \$500,000.00 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence, covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operations of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the project. Said policy shall also contain a "severability of interest endorsement".
3. Worker's Compensation and employer's liability insurance and all other similar insurance with respect to the employees of the Association in the amounts and in the forms now or hereafter required by law.

4. The Association shall purchase, in an amount not less than one hundred fifty percent (150%) of the Association's estimated annual operating expenses and reserves, fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation, and shall name the Association as an obligee.
  5. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the project, including plate or other glass insurance, and insurance against loss to any personal property of the Association located on the project.
- B) All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a condominium unit owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the insured, including mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all first mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney in fact and trustee for all of the condominium unit owners, which policy or policies shall identify the interest of each condominium unit owner (owner's name and unit number designation) and first mortgagee.
- C) Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Managers of the Association shall obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonable estimate the full replacement value of the entire condominium project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be affected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than the full replacement cost. Determination of maximum replacement value shall be made at least bi-annually by one or more appraisals to be furnished by a person knowledgeable of replacement cost, and each mortgagee shall be furnished with a

copy thereof, within thirty (30) days after receipt of such appraisals. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

- D) Unit owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that, the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any additional insurance carried by any unit owner.
- E) Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personality or other property belonging to an owner, and public liability coverage within each unit, shall be the sole and direct responsibility of the unit owner thereof, and the Board of Managers, the Association and/or the Managing Agent shall have no responsibility therefore.

23. **Lien for Non Payment of Assessments:**

All sums assessed by the Association but unpaid by the owner of any condominium unit, including interest thereon at eighteen percent (18%) per annum commencing the first day after the due date, shall constitute a lien on such unit superior (prior) to all other liens and encumbrances, except only for all sums unpaid on a first mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such lien, and except for tax and special assessment liens in favor of a governmental assessing entity.

To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the owner of the condominium unit and a description of the condominium unit. Such notice shall be signed on behalf of the Association and by an officer of the Association and shall be recorded in the office of the Clerk and Recorder of the County of Mesa. Such lien shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure by the Association of the defaulting owner's condominium unit in like manner as mortgages on real property; however, a lawsuit to recover a money judgment for unpaid assessments shall be maintainable without

foreclosing or waiving this lien. The lien provided herein shall be in favor of the Association and for the benefit of all of the condominium unit owners who are members of the Association. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses and attorney's fees for filing the notice or claim of lien, and all reasonable attorney's fees in connection with such foreclosure. The owner shall also be required to pay to the Association the monthly assessment for the condominium unit during the period of foreclosure and the Association shall be entitled to a receiver to collect the same. The Association on behalf of the unit owners shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

Declarant states, in accordance with the requirements of the Colorado Condominium Ownership act, that it is possible that liens, other than mechanic's liens, assessment liens and tax liens, may be obtained against the Common Elements, including judgment liens and purchase money mortgage liens.

24. **Owner's Obligation for Payment of Assessment:**

The amount of the expenses assessed by the Association against each condominium unit shall be the personal and individual debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. No owner may exempt himself from liability for his contribution toward the Common Expenses by a waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

25. **Liability for Common Expenses Upon Transfer of Condominium Unit:**

Upon payment of a reasonable fee not to exceed Thirty Dollars (\$30.00) and upon the written request of any owner, any mortgagee or any prospective mortgagee of a condominium unit, the Association shall issue a written statement setting forth the amount of the unpaid expenses, if any, assessed to such unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10)

days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit, including a first mortgagee who comes into possession of a condominium unit pursuant to the remedies provided in its mortgage or becomes an owner of a condominium unit pursuant to foreclosure of its mortgage or by the taking of a deed in lieu thereof, or any purchaser at a foreclosure sale, shall not be liable with the grantor for unpaid assessments against the latter for the grantor's proportionate share of expenses up to the time of the grant or conveyance of a unit, unless the grantee expressly assumes such liability. Any such express assumption shall be without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Upon payment of a reasonable fee not to exceed Thirty Dollars (\$30.00) and upon written request, any prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, Association setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association, unless such request for a statement of indebtedness shall be complied with within ten (10) days of such request, then a grantee shall not be liable for, nor shall the condominium unit conveyed by subject to, a lien for any unpaid assessments against the subject unit. Notwithstanding the terms and provisions set forth above, no first mortgagee shall be liable for any unpaid common expense or special assessments accruing prior to the time such mortgagee becomes the record owner of any condominium unit whether by way of foreclosure or any proceedings in lieu thereof, but will be liable for those thereafter. Any such unpaid assessments shall become a common expense to be collected equally from all owners including such grantee, his successors and assigns.

26. **Mortgaging a Condominium Unit - Priority:**

Any owner shall have the right from time to time to mortgage or encumber his interest in a condominium unit by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. An owner may create junior

mortgages on the following conditions: (I) that any such junior mortgages shall always be subordinate to all terms, conditions, expenses, and other obligations created by this Declaration and by the Bylaws; and (ii) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were affected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if not granted, may be executed by the Association as attorney in fact for such junior mortgagee.

27. Mortgagee Rights:

- A) In the event there is any conflict between this Paragraph 27 and any other provision of this Declaration, the Articles, the Bylaws or the Rules and Regulations of the Association with respect to the approval of the mortgagees as to those matters set forth in this Paragraph 27, the provisions of this Paragraph 27 shall govern.
- B) The prior written approval of institutional holders of a first mortgage lien on units in the project shall be required for the following:
  - 1. Fifty one percent (51%) of all for the abandonment or termination of the project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; and
  - 2. The effectuation of any decision by the Association to terminate professional management and assume self-management of the project; and
  - 3. Two thirds (66%) of all for any material amendment to the Bylaws of the Association.
- C) The prior written approval of fifty one percent (51%) of mortgagees, set forth in a duly recorded instrument, shall be required for the revocation or amendment of the Declaration, including, but not limited to, any amendment which would change the percentage interests of the unit owners in the common elements.

- D) No unit in the project may be partitioned or subdivided without the prior written approval of the holder of the first mortgage lien on such unit.
- E) Any institutional holder of first mortgage on a unit in the project will, upon request, be entitled to:
  - 1. Inspect the books and records of the project during normal business hours;
  - 2. Receive an annual audited financial statement of the project with ninety (90) days following the end of any fiscal year of the project; and
  - 3. Written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.
- F) Any lien which the Association may have on any unit in the project for the payment of Common Expense assessments (and special assessments) attributable to such unit shall be subordinate to prior tax liens, to the lien of any first mortgage on the unit recorded prior to the date any such common expense assessments (and special assessments) become due, and to any mortgage guaranteed by the U.S. Veterans Administration.
- G) In the event of substantial damage to or destruction of any unit in excess of One Thousand Dollars (\$1,000.00), or any part of the common elements in excess of Ten Thousand Dollars (\$10,000.00), the institutional holder of any first mortgage on a unit shall be entitled to timely written notice of any such damage or destruction, and no owner of a unit or other party shall have priority over such institutional holder with respect to the distribution to such owner of any insurance proceeds.
- H) If any unit or portion thereof, or the common elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired

by a condemning authority, then the holder of any first mortgage on a unit will be entitled to timely written notice from the Association of any such proceeding or proposed acquisition and no owner or other party shall have priority over such institutional holder with respect to the distribution to such owner of the proceeds of any award or settlement.

- I) Each holder of a first mortgage lien who comes into possession or title to a unit by virtue of foreclosure or any purchaser at a foreclosure sale, shall take the unit free of any claims for unpaid assessments and charges against the unit which accrued and were payable prior to the time such holder comes into possession of or acquires title to the unit, except for claims for a pro-rata share of such assessments or charges resulting from a pro-rata reallocation of such assessments or charges to all units including the mortgaged unit.
- J) At the request of a mortgagee of a unit, the Association shall report any unpaid assessments due from the owner of such unit.
- K) Except as provided in Paragraph 36 concerning annexations, unless at least fifty one percent (51%) of the first mortgagees (based upon one vote for each first mortgage owned) of condominium units or owners (other than the Declarant) have given their prior written approval, neither the Association nor the owners shall be empowered or entitled to:
  - 1. Change the pro-rata interest or obligations of individual condominium units for the purpose of: (I) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro-rata share of ownership of each condominium unit in the common elements.
  - 2. Use hazard insurance proceeds for loss to the improvements for other than the repair, replacement or reconstruction of such improvements; or
  - 3. Terminate professional management and assume self-management of the project.
- L) The Association shall grant to each owner and each first mortgagee

of a condominium unit the right to examine copies of the current Declaration, Articles, Bylaws, and books and records of the Association at any reasonable time.

- M) Any encumbrances holding a lien on a condominium unit may, but shall not be required to, pay any unpaid common expense payable with respect thereto and upon such payment, such encumbrance shall have a lien on such unit for the amounts paid, of the same rank as the lien of his encumbrance, without the necessity of having the record a notice or claim of such lien.
- N) Upon request of a mortgagee, the Association shall report in writing to the mortgagee of a condominium unit any unpaid assessment remaining unpaid for more than thirty (30) days after due, or other default of any covenant, condition, obligation or term of this Declaration not cured within thirty (30) days, provided, however, that a mortgagee shall have furnished to the Association notice of such encumbrance.
- O) The Association, upon request of any first mortgagee, shall furnish evidence that all taxes, real estate assessments and charges shall relate only to an individual condominium unit and not to the condominium project as a whole.
- P) Notwithstanding Paragraph 13, any mortgagee of a condominium unit who shall become the owner of such unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any other owner against liability for claims for labor or materials provided and incorporated into such unit where such claims arise for such labor performed or materials supplied prior to the date such mortgagee becomes an owner of such unit, but shall be under such obligation for any claims thereafter.
- Q) The lien which may be created in favor of Mesa County pursuant to Paragraph 17(B)(3) shall never be superior to the lien of a first mortgagee upon any unit or upon the common elements.
- R) The Association shall send to the first mortgagee of a unit any notice of lien for unpaid assessments being filed by the Association pursuant to Paragraph 23 upon such unit.

28. Association - Attorney in Fact:

This Declaration does hereby make mandatory the irrevocable appointment of an attorney in fact to deal with the property upon its damage, destruction or obsolescence. Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney in fact herein provided. All of the owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its damage, destruction or obsolescence as is hereinafter provided. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which may be necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraph means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each unit and the general and limited elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement as is provided hereinafter.

- A) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney in fact, to such reconstruction, and the improvements shall be promptly repaired and are reconstructed. The Association shall have full authority, right and power, as attorney in fact, to cause the repair and restoration of the improvements.
- B) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than seventy percent (70%) of the total replacement cost of all of the condominium units in this project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney in fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their condominium units. Such special assessment shall be a common expense and made equally to each unit and shall be due and payable no earlier than thirty (30) days after

written notice thereof. The Association shall have full authority, right and power, as attorney in fact, to cause the repair, replacement or restoration of the improvements, using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 23. In addition thereto, the Association, as attorney in fact, shall have the absolute right and power pursuant to a judicial foreclosure to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association, as attorney in fact, pursuant to the provisions of this paragraph. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at a rate of eighteen (18%) per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association as attorney in fact, in the following order:

1. For payment of the balance of the lien of any first mortgage;
  2. For payment of taxes and special assessment liens in favor of any assessing entity and the customary expenses of sale;
  3. For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
  4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
  5. The balance remaining, if any, shall be paid to the condominium unit owner.
- C) If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is more than seventy percent (70%) of the total replacement cost of all of the condominium units in this project not including land such damage

or destruction shall be promptly repaired and reconstructed by the Association as attorney in fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the owners and their condominium units as provided in subparagraph (B) above, provided, however, that if the owners of two thirds (2/3) of the units (and subject to the approval of mortgagees as set forth in paragraph 27) agree that the improvements should not be so repaired and reconstructed then upon recording of a notice to such effect by the Association's president and secretary or assistant secretary, the project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney in fact for all of the owners, free and clear of the provisions contained in this Declaration, the map, the Articles, the Bylaws, and the regulatory agreement. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be allocated equally to each unit and such divided proceeds shall be paid into separate accounts, each such account shall be in the name of the Association, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account the Association, as attorney in fact, shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgagee encumbering the condominium unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the project. Such apportionment shall be equal for each unit. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney in fact, for the same purposes and in the same order as is provided in subparagraph (B) of this paragraph.

- D) The owners representing an aggregate ownership of two thirds (2/3) of the condominium units in this project may agree that the common elements are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the approval of mortgagees as set forth in paragraph 27. If a plan for the renewal or reconstruction is adopted, notice of such plans shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the owners as a common expense whether or not they have previously consented to the plan of renewal and reconstruction.

The Association as attorney in fact, shall have the absolute right and power pursuant to a judicial foreclosure to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The delinquent owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eighteen percent (18%) per annum, and all reasonable attorney's fees. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney in fact for the same purposes and in the same order, as is provided in subparagraph (B) of this paragraph.

- E) The owners representing an aggregate ownership of two thirds (2/3) of the condominium units may agree that the condominium units are obsolete and that the same should be sold. Such plan or agreement must have the approval of mortgagees as set forth in Paragraph 27. In such instance, the Association shall forthwith record a notice setting forth such fact and upon the recording of such notice by the Association's president and secretary or assistant secretary, the entire project shall be sold by the Association, as attorney in fact, for all of the owners, free and clear of the provisions contained in this Declaration, the map, the Articles, the Bylaws, and the Regulatory Agreement. The sale proceeds shall be apportioned among the owners, subject to the provisions of Paragraph 36 concerning annexations, on the basis of one (1) share for each unit, and such apportioned proceeds shall be paid into separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association and shall be further identified by the condominium unit designation and the name of the owners. From each separate account, the Association as attorney in fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph(B) of this paragraph.
- F) The Association shall be under a fiduciary duty to use all funds available to it for repair and restoration of all or any portion of the project which has suffered damage for the joint benefit of the owners and first mortgagees having an interest in such damaged property. Prior to commencement of repairs or restoration work

(except in the event of emergency repairs), the Association shall make available at the project and the Association's offices, for inspection and copying during normal business hours.

29. Condemnation:

If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the condominium project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this paragraph 29 shall apply:

A) Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award" shall be payable to the Association.

B) Complete Taking:

1. In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the owners on the same basis of each condominium interest in the common elements, provided however, that if a standard different from the value of the property as a whole is employed as the measure of the condemnation award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

2. On the basis of the principle set forth in paragraph 28, the Association shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in paragraph 28.

C) Partial Taking:

In the event that less than the entire condominium project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the

condemnation award to be determined in the following manner. As soon as practicable the Association shall reasonably and in good faith, allocated the condemnation award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the owners as follows: (I) the total amount allocated to taking of or injury to the common elements, shall be apportioned among the owners on the basis of each owner's interest respectively in the common elements; (ii) the total amount allocated to severance damages shall be equitably apportioned to those condominium units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or injury to a particular unit and to the improvements an owner has made within his own unit shall be apportioned to the particular unit involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the condemnation award is already established in negotiations, judicial decree or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner as provided in paragraph 28. In the event a partial taking results in the taking of a complete unit, the owner thereof automatically shall cease to be member of the association, shall cease to hold any right, title or interest in the remaining common elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership voting rights and assessment ratio equally among the remaining units and shall submit such reallocation interest in the remaining common elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio equally among the remaining units and shall submit such reallocation to the owners and to first mortgagees of remaining units for amendment of this Declaration as provided in Paragraph 19.

30. Additional Property for Common Use:

The Association may acquire and hold for the benefit of the condominium owners, real property, and tangible and intangible personal property, and may dispose of the same by, sale or otherwise, and the beneficial interest in any such property shall be owned by the condominium owners in the

same proportion as their respective interests in the common elements and shall not be transferable except with a transfer of a condominium unit. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such real or personal property without any reference to inclusion of a bill of sale. Each owner may use such real and personal property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. Sale of a condominium unit under foreclosure shall thereby entitle the purchaser thereof to the beneficial interest in the real and personal property associated with the foreclosed condominium unit. The owners of each condominium unit shall have a perpetual non-exclusive easement in common with all other condominium unit owners in this condominium project giving them the right to beneficial use and enjoyment of any recreational facilities which the Association acquires, and holds, either by purchase or by gift and for walkways, vehicular access and parking and any other common element as set forth on the condominium map and in this Declaration, subject, however, to reasonable regulations adopted and amended by the Association.

31. Registration by Owner of Mailing Address:

Each owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an owner shall be sent by either registered or certified mail, postage prepaid and addressed in the name of the owner of such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid to the Grace Park Filing No. 1 Condominium Association, Inc. C/o Christian Brothers Realty, 1008 Third Avenue, Grand Junction, Colorado 81502, until such address is changed by a notice of address change duly recorded in the office of the Clerk and Recorder, County of Mesa, State of Colorado.

32. Period of Condominium Ownership:

The separate condominium estates created by this Declarant and the map shall continue until this Declaration is revoked in the manner and as provided in paragraph 27 of this Declaration or until terminated in the manner and as is provided in subparagraphs ( C ) or ( E ) of paragraph 28 of this Declaration.

33. Restrictive Covenant:

- A) The property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No structures of a temporary character, trailer, boats, campers, camper shells, inoperative motor vehicles, tent, shack, garage, barn or other out building shall be used or permitted to be kept or stored on any portion of the premises at any time either temporarily or permanently except as provided for in the proposed recreational vehicle parking referred to in Article 3A of the Declaration.
- B) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, his agents, employees and contractors to maintain during the period of sale of the condominium units, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental of the sale of condominium units and interests, including, but without limitation, a business office, storage area, signs, model units, sales office, parking areas and lighting during any construction and marketing period.
- C) No animal, livestock, reptile or poultry of any kind shall be raised, bred or kept on the property, except that pet birds and not more than two (2) domesticated pet dogs or cats may be kept on the premises at a unit, subject to all County of Mesa, Colorado animal ordinances and subject to rules and regulations from time to time adopted and amended by the Association, provided, however, that such pets are not kept for commercial purposes. An owner is responsible for all damage caused by his animal(s). No animals which disturb any owner shall be allowed to remain tied or chained to any balcony, patio or other parts of the condominium unit and any such animal(s) so tied or chained may be removed by the Association or its agents.
- D) No advertising signs (except one not more than one square foot "For Rent" or "For Sale" sign per unit), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises of a unit or the common elements, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any condominium unit or any resident thereof. Further, no business activities of any kind

whatever shall be conducted in the buildings or in any portion of the project. Provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the maintenance of buildings and improvements, if any, of the Declarant, its agents, contractors, and assigns during the marketing period and of the Association, its successors and assigns in furtherance of its powers and purposes as hereinafter set forth.

- E) All garbage cans, wood piles, or similar items shall be kept screened so as to conceal them from view of neighboring units and streets. All rubbish, trash or garbage shall be regularly removed from the property by the owner, and shall not be allowed to accumulate thereon.
- F) Except in the individual balcony and patio areas, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except such as are installed in accordance with the initial construction of the buildings located thereon and those added to the project or as approved by the Architectural Control Committee. No gardening or maintaining of any tree, shrub, bush or other plant shall be made or done by any owner in any patio area which will or would affect the view of any other owner without the prior written approval of the Architectural Control Committee.
- G) Any screen door or storm door installed over the front door of a unit must have the same color as the unit's front door. No window air conditioning units, or visible antenna, shall be installed in or on any condominium unit.

34. Architectural Control:

- A) **Review of Plans.**  
No building, fence, wall, canopy, awning, structure or improvement shall be commenced, erected, altered, moved, removed or maintained upon the project or any portion thereof, nor shall any exterior addition to, or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee composed to three (3) or more representatives appointed by the Board.

B) Architectural Control Committee:

The Architectural Control Committee (ACC) shall be appointed by the Board and shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the project conform to and harmonize with existing surroundings and structures. The committee shall consist of three (3) persons.

C) Procedures.

The ACC shall approve or disapprove all plans and requests within thirty (3) days after submission. In the event the ACC fails to take any action within thirty (30) days after requests have been submitted, approval will not be required, and this paragraph 34© will be deemed to have been fully complied with.

D) Majority Vote.

A majority vote of the ACC is required for approval or disapproval proposed amendments.

E) Written Records.

The ACC shall maintain records of all applications submitted to it and of all actions it may have taken.

F) No Liability.

Each owner hereby agrees that the ACC shall not be liable for damages to any person submitting requests for approval or to any owner with the properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

G) **Reservation of Right to Exercise by Declarant.**

Notwithstanding any other provision expressly or implied to the contrary contained in this Declaration, the Articles, the Bylaws, the Rules and Regulations, Declarant reserves the right to exercise the rights, duties and functions of the Association's ACC until such time as all of the condominium units situated on the property, including any property and condominium units annexed thereto and made subject to this Declaration, have been sold and conveyed by Declarant.

35. **Acceptance of Provisions of All Documents.**

The conveyance or encumbrance of a condominium unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles, the Bylaws, the Regulatory Agreement, rules and regulations and management agreement and shall be binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

36. **Reservation to Enlarge and Supplement Project:**

- A) **Annexation by Declarant.** Declarant, for itself, its successors and assigns, expressly reserves, until seven (7) years from the date of the recording of this Declaration, the right to enlarge this project (without the permission of the owners) by annexing additional real property described in Exhibit C attached hereto and by this reference incorporated herein by declaration of no more than ninety-two (92) additional condominium units in five (5) phases. Such additions shall be expressed in and by a duly recorded supplement to this declaration and the map. All additional common elements and units shall be of comparable quality and similar appearance to those previously erected upon the real property. The reference to the declaration in any instrument shall be deemed to include any supplements to the declaration without specific reference thereto. As long as there is a Class B membership, all annexations to this project must have the prior approval of the Federal Housing Administration or the Veteran's Administration.
- B) **Standards.** Such supplements to this declaration shall provide for a division of such annexed real property and

improvements into condominium units and common elements similar in method and form to the division made of the real property and improvements in this declaration.

- C) **Common Expenses.** In order that the common expenses of this project, including all supplemental declarations hereto, shall continue to be shared equally and equitably by the owners of the initially submitted condominium units and the owners of all subsequently submitted additional condominium units; the common expenses shall be equally shared in accordance with the following formula: to determine the share of the common expense for each condominium units, multiply the total amount of the common expenses by a fraction, the numerator of which shall be the number one and the denominator shall be the total number of all condominium units then existing under this declaration and all supplements thereto.
- D) **Voting Rights.** The owners of each unit now or hereafter declared shall be entitled to collectively cast one (1) vote at any election or meeting of the association members in accordance with paragraph 22, the Articles and the Bylaws. The owners of a unit shall determine among themselves how such vote shall be cast. Fractional votes may not be cast by owners.
- E) **Determination of Interests in Common Elements.**

The Declaration acknowledges that the initial allocation of an interest in the common elements appurtenant to each unit is based upon the expectation that all phases of the project will be completed. As such, until all 104 units have been declared, one hundred percent (100%) of the interests in the common elements will not have been allocated. Therefore, until declaration of all 104 condominium units or a redetermination of such interests as provided below, if and when it is necessary to allocate insurance, sales or condemnation proceeds (or for any other purpose) among the units and their mortgagees according to their interests in the common elements, such allocation shall be determined on the basis of one share per unit counting only those condominium units presently declared under this declaration and all supplements of record as of the time of the occurrence of the event giving rise to such an allocation.

A final re-computation of the interests of the condominium units in the common elements shall also occur as the result of termination of declarant's right to enlarge the project pursuant to this Paragraph 36 for any of the reasons set forth below:

1. The Declarant has executed and recorded its Notice of Termination of Declarant's Right of Annexation, which notice shall state that the declarant hereby releases and waives its right to enlarge and annex additional property to the project pursuant to this paragraph 36, and which notice shall include a final schedule of one hundred percent (100%) of the common elements allocated equally among the declared units existing as of the time of execution of such notice; or
2. Within eighteen (18) months after declarant has conveyed the last condominium unit it owned as part of the Declaration and all subsequent supplemental declarations, if the Declarant shall have failed to record with the County of Mesa, Colorado a supplemental declaration declaring additional condominium units pursuant to paragraph 36; or
3. Seven (7) years shall have elapsed since the day this Declaration was recorded with the County of Mesa and less than the entire 104 condominium units contemplated shall have been declared by execution and recording of this Declaration and supplemental declarations thereto.

Upon the occurrence of event (2) or (3), within thirty (30) days thereafter the Association shall prepare and record pursuant to this paragraph 36, a schedule setting forth a final, recomputed equal allocation of interest in the common elements among the condominium units then declared and existing.

F) Special Terms:

1. Except as may be otherwise specifically provided by the provisions of such supplement(s) to this Declaration, all of the provisions contained in this Declaration shall be applied to such condominium units submitted to the project.
2. Each owner shall have the non-exclusive right, together with

all other owners, to use all common elements, open spaces, recreational facilities, grass and landscaping are as, sidewalks, pathways, private streets, and all other areas in the project and any supplements or additional thereto, owned by the Association, subject to the reasonable rules and regulations of the Association. This easement shall be irrevocable and shall be for the purpose of ingress and egress, recreational and social use and shall apply to all property hereafter owned by the Association and committed to the project.

3. Although it is contemplated that additional lands may ultimately be annexed to this project and additional condominium units declared, the Declarant, its appointees, successors and assigns, as defined in this Declaration, shall apply to all real property which is added to this project in accordance with these provisions relating to enlargement.

G) Annexation by Owners.

Additional real property may be annexed to the project with the consent of two thirds (2/3) of each class of members of the Association.

37. General.

A) If any of the provisions of this Declaration of any paragraph, sentence, clause, phrase or work, or the application thereof in any circumstance be invalidated, such validity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or work in any other circumstance shall not be affected hereby.

B) The provisions of this Declaration, the Articles and the Bylaws shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado and to all other provisions of law, and the provisions of such act shall apply in the event of conflict with, or omission from, this Declaration, the Articles or the Bylaws of provisions required by such Act.

- C) Whenever used herein, unless the context shall otherwise provide, the plural, the singular, and the use of any gender shall include all genders.
- D) In the event there shall be any conflict between the provisions of this Declaration and any Bylaw or rule and regulation of the Association, the provisions of this Declaration shall be deemed controlling.
- E) No unit owner may lease his unit for transient or hotel purposes. No unit owner may lease less than the entire unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles, the Bylaws, and the Regulatory Agreement and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Unless expressly waived by the Board, all leases shall be in writing for an initial term of not less than six (6) months, and shall require the tenant to abide by the terms of all documents governing the project.
- F) At the time of the recording of this Declaration, there were no recreational facilities for this condominium project.

## **EXHIBIT A**

### **SURVEY DESCRIPTION**

#### **PHASE I, GRACE PARK**

#### **CITY OF FRUITA, MESA COUNTY, COLORADO**

A parcel of land located in the Southwest 1/4 of Section 16, Township 1 North, Range 2 West of the Ute Principal Meridian in the City of Fruita, Mesa County, Colorado, and being more specifically described as follows:

Beginning at a point which bears South 89 degrees 48'37" East 30.00 feet and South 00 degrees 09'19" West 177.49 feet from the West Quarter corner of said Section 16, Township 1 North, Range 2 West of the Ute Meridian; thence South 89 degrees 50'41" East 163.00 feet; thence South 00 degrees 09'19" West 40.00 feet; thence along the arc of a curve to the right having a radius of 310.98 feet, whose chord bears South 84 degrees 39'59" East 56.13 feet, 56.21 feet along the arc of said curve to a point of

intersection with a straight line; thence South 00 degrees 09'19" West 245.82 feet; thence North 49 degrees 03'21" West 289.13 feet along the North right of way line of the Independent Ranchman's Ditch to a point on the East line of 18 Road; thence along the East line of said 18 Road North 00 degrees 09'19" 102.00 feet to the point of beginning, except that portion of Carolina Avenue which is a dedicated public right of way and being more specifically described as follows:

Beginning at a point which bears South 89 degrees 48'37" East 30.00 feet and South 00 degrees 09'19" West 177.49 feet from the West Quarter (1/4) Corner of said Section 16, Township 1 North, Range 2 West of the Principal Meridian; thence South 89 degrees 50'41" East 163.00 feet; thence South 00 degrees 09'18" West 40.00 feet; thence North 89 degrees 50'41" West 163.00 feet; thence North 00 degrees 09'19" East 40.00 feet to the point of beginning, containing 0.150 acre, leaving a net area of 0.780 acres, more or less.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 29<sup>th</sup> day of August, 1983.

CHRISTIAN BROTHERS CONSTRUCTION,  
A Colorado Limited Partnership

Paul Riga  
Paul Riga, as attorney in fact for  
Christian Brothers Construction, A  
Colorado Limited Partnership

STATE OF COLORADO    )  
                                  ) SS  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of August, 1983 by Paul Riga as attorney in fact for Christian Brothers Construction, a Colorado Limited Partnership.

WITNESS my hand and official seal.

My commission expires: 05/10/88

*Gary W. Robison*

\_\_\_\_\_  
NOTARY PUBLIC-W. Gary Robison