

77 PAGE DOCUMENT

DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
OF  
FOUNTAIN GREENS PATIO HOMES HOMEOWNERS ASSOCIATION

The Undersigned, being Owners of certain Lots within that portion of Fountain Greens Subdivision known as the Fountain Greens Patio Homes, hereby adopt the following as the Declaration of Covenants, Conditions and Restrictions and Easements of Fountain Greens Patio Homes Homeowners Association.

RECITALS

A. The Undersigned are the Owners of Lots within Fountain Greens Subdivision, Filing Two, all situated in Mesa County, Colorado, as shown on the plats for Fountain Greens Subdivision and described in the plat books and records of the Mesa County Clerk and Recorder. As such, each Owner is a member of the Fountain Greens Master Association, a common interest community as defined under the Colorado Common Interest Ownership Act ("CCIOA"), and subject to the Declaration of Covenants, Conditions, Restrictions of the Fountain Greens Master Association, recorded on December 30, 1999, in Book 2667 beginning at Page 1 in the records of the Mesa County Clerk & Recorder.

B. Notwithstanding the foregoing, the undersigned desire to form and maintain a separate common interest community and to subject and place upon all of the Lots described herein ("Property") certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of CCIOA, for the purpose of protecting the value and desirability of said Property and for the purpose of furthering a plan for the improvement, maintenance, and ownership of said Property.

C. The undersigned acknowledge that there are 63 lots in the Fountain Greens Subdivision, Filing Two, which collectively are known as the Fountain Greens Patio Homes. Only those lots whose Owners have signed this Declaration shall be bound by its terms or those owners who subsequently agree to be bound thereby.

NOW, THEREFORE, the undersigned hereby declare that all of the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the above-described Property and be binding on all parties having any right, title, or interest in the above-described Property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE 1: DEFINITIONS

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

- 1.1 ACC means an Architectural Control Committee of the Association appointed' by the Board.
- 1.2 Act means the Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. §§38-33.3-101, et sec. as it may be amended from time to time.
- 1.3 Agencies means and collectively refers to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.
- 1.4 Articles means the Articles of Incorporation or the Association as they may be amended from time to time.
- 1.5 Assessments means any assessments, fine and/or assessed or levied against any Lot Owner pursuant to this Declaration.
- 1.6 Assessment Lien or Lien means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The recording of this Declaration constitutes record notice and perfection of the lien. No further recordation or claim of lien for the Assessment is required.
- 1.7 Association means FOUNTAIN GREENS PATIO HOMES HOMEOWNERS ASSOCIATION, INC., a Colorado Corporation, not for profit, organized pursuant to §38-33.3-301 of the Act, its successors and assigns, the Articles of Incorporation and Bylaws of which, as herein defined, along with this Declaration, shall govern the administration of the Property, the Members of which shall be all of the Owners of the Lots within the Property who have executed this Declaration.
- 1.8 Board of Directors or Board means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association duly elected pursuant to the Bylaws of the Association

or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

1. 9 Building means any building improvements constructed on the Property.
1. 10 Bylaws means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association, as they may be amended from time to time.
1. 11 Common Area means all the real property and improvements thereon, if any, in which the Master Association owns an interest for the common use and enjoyment of all of the Owners within the Subdivision on a non-exclusive basis. Such interest may include, without limitation, estates in fee, for terms of years, or easements.
1. 12 Common Expense Assessments means those assessments defined in Paragraph 6.2 hereof.
1. 13 Common Expense Assessments Liability means the liability for the Common Expense Assessment allocated to each Lot.
1. 14 Common Expenses means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves, which are applicable to the Lots within this Association.
1. 15 Costs of Enforcement means all fees, late charges, interest, expenses, including receiver's fees and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligations of the Declaration or other Association Documents.
1. 16 Declaration means the DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF FOUNTAIN GREENS PATIO HOMES HOMEOWNERS ASSOCIATION, as may be amended from time to time, together with any and all Supplemental Declarations that may be recorded from time to time and also including but not limited to plats and maps.
1. 17 Dwelling Unit shall mean and refer to any residential improvement constructed upon the Property described herein, including single family residences, duplexes and patio homes.
1. 18 Eligible Mortgagee means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address and the legal description of property in which it is interested, requesting that the Association notify them on any proposed action requiring the consent of a specified percentage of Eligible Mortgagees.
1. 19 First Mortgagee means any Person who owns, holds, insures or is a governmental guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering

a Lot within the Property. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1. 20 First Security Interest means a Security Interest: (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1. 21 Guest means (a) any person who resides with an Owner within the Property; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Lot within the Property, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.

1. 22 Improvements means and refers to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, storm water retention/detention and irrigation water system, irrigation facilities such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Properties.

1. 23 Lot means the plots of land subject to this Declaration and designated as a "Lot" on any subdivision plat or drawing of the Property recorded by the Developer of the Subdivision the office of the Clerk and Recorder of Mesa County, Colorado, together with all appurtenances and improvements now or in the future on the Lot, including a Residence. The term "Lot" shall, to the fullest extent possible, be synonymous with the term "Lot" in C.R.S. § 38-33.3-103(30).

1. 24 Managing Agent means anyone or more persons employed by the Association who is engaged to perform any of the duties or functions of the Association.

1. 25 Master Association shall refer to the Fountain Greens Master Association, of which all of the Lots within this Association are also a part, and to which all Lots are subject to the Declaration for said Master Association.

1. 26 Member means each Owner of each Lot within the Property which is subject to this Declaration.

1. 27 Notice and Hearing means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Declaration or Bylaws.

1. 28 Occupant means any person occupying a residence on a Lot within the Property who is not an Owner.

1. 29 Owner means the owner of record of the fee simple ride to any Lot which is subject to this Declaration, whether one or more persons or entities, but excluding, however, those having an

interest merely as security for the performance of any obligation. Depending on the context, it may mean the Owner or Owners of a Lot.

1. 30 Person means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1. 31 Property means and refers to all of the Lots described herein and subject to this Declaration. The Property (as the term is defined in C.R.S. § 38-33.3-103(30) is also described on Exhibit A attached hereto and incorporated herein by reference and any additional Lots which become part of the Property.

1. 32 Residence means any duplex or patio home constructed on any Lot.

1. 33 Rules means the Rules and Regulations adopted by the Board of Directors for the regulation and management of the Property and water system (which may include watering restrictions) as amended from time to time.

1. 34 Security Interest means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

1. 35 Special Assessment means those Assessments defined in Paragraph 6.4 hereof.

1. 36 Subdivision means the Fountain Greens Subdivision, including all filings thereof, such as the Condominiums, the Patio Homes and the Hamlets.

1. 37 VA and/or FHA Approval means that the Property has been approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots within the Property.

## ARTICLE 2: COMPLIANCE

2. 1 Compliance With Provisions of Declarations, Articles and Bylaws of the Association. Each Owner shall comply strictly with, and shall cause each of his or her Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws of the Association, and the decisions, rules, regulations and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Each Owner shall be responsible for the compliance by his or her Guests. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit

and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by any aggrieved Owner. In addition thereto, each Owner and Lot shall be subject to the Declaration and the Articles and Bylaws of the Master Association, and the decisions, rules, regulations and resolutions of that Association adopted pursuant thereto, as the same may be lawfully amended from time to time.

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

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

#### ARTICLE 3: VARIOUS RIGHTS AND EASEMENTS

3.1 Owner's Rights in the Common Areas. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas within the Association subject to the provisions of the Declaration of the Master Association.

#### ARTICLE 4: THE ASSOCIATION

4.1 Name. The name of the Association is FOUNTAIN GREENS PATIO HOMES HOMEOWNERS ASSOCIATION.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall undertake all of its obligations as contained herein, including those under Section 4.12, and shall have the right to enforce the terms of this Declaration, as amended, in order to keep and maintain the Property in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners and the residents of the Property. Any purchaser of a Lot which is subject to this Declaration shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes. Such powers and authority shall be subject to the rights and obligations under the Declaration for the Master Association. The Board of Directors shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association.

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

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

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

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

(a) Each Lot shall be entitled to one vote and the vote for such Lot shall be exercised by the Owner or Owners as they determine. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Lot without a protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If there is no majority agreement among the owners of a Lot, there shall be no vote for such Lot.

(b) Votes for contested positions on the Board shall be taken by secret ballot. At the discretion of the Board or upon the request of at least twenty percent (20%) of the Owners who are present in person or represented by proxy if a quorum has been achieved, a vote on any other matter affecting the Subdivision on which all Owners are entitled to vote shall be by secret ballot. Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be board members, and in the case of a contested election for a Board position, shall not be a candidate. The results of the vote shall be reported without reference to names, addresses, or other identifying information of Owners participating in such vote.

(c) Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the Declaration, Bylaws, or Rules of the Association, appointment of proxies may be made substantially as provided in Colorado Revised Statute (CRS) § 7-127-203.

(d) If a Lot is owned by more than one person, any Owner of the Lot may vote or register a protest to the casting of votes by the other Owners of the Lot through a duly executed

proxy. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless it provides otherwise.

(e) The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Owner.

(f) The Association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(g) Any action of the Association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

(h) The Board may suspend the voting rights of any Owner during any period for which an Owner is in default and delinquent in paying any amount owed to the Association or is in violation of any of the governing documents of the Association.

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

4.7 Directors of the Association. The affairs of this Association shall be managed by a Board of at least three (3) Directors (the "Board"). If there are less than three Members who are willing to serve as Directors, the number of Directors shall be the number of Members who are willing to serve as Directors. Directors shall be Members of the Association and also meet the qualifications described in the Articles of Incorporation and Bylaws of the Association. The Board shall elect the officers at the annual meeting after the Board election, or within a reasonable time after the annual meeting. Such Board members and officers will take office immediately after the Annual meeting. The qualifications of the officers of this Association may be as set forth in the Bylaws of the Association.

4.8 Meetings.

(a) Meetings of the Owners, as the members of the Association, shall be held at least once each year. Special meetings of the Owners may be called by the president, by a majority of the Board, or by Owners having twenty percent, or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than fourteen (14) nor more than fifty (50) days in advance of any meeting of the Owners, the secretary or other officer specified in the Bylaws shall

cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the Owner. The notice of any meeting of the Owners shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices that may be given pursuant to paragraph (b) of this section. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board. The presence of owners of thirty-four percent (34%) of the Lots subject to the Declaration, either in person or by proxy, shall constitute a quorum necessary to transact business at any meeting of the Lot Owners. There are 63 Lots in Filing Two of the Subdivision, so that if all those Lots are subject to this Declaration, a meeting of the owners of 22 of the Lots shall constitute a quorum.

(b) All regular and special meetings of the Association's Board, or any committee thereof, shall be open to attendance by all members of the Association or their representatives. Agendas for meetings of the Board shall be made reasonably available for examination by all members of the Association or their representatives. The Association may provide all notices and agendas required by this article in electronic form, by posting on a web site or otherwise, in addition to printed form. If such electronic means are available, the Association shall provide notice of all regular and special meetings of Owners by electronic mail to all Owners who so request and who furnish the Association with their electronic mail addresses. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting.

(c) Notwithstanding any provision in the Declaration, Bylaws or other documents to the contrary, all meetings of the Association and Board of Directors are open to every Owner of the Association, or to any person designated by an Owner in writing as the Owner's representative at an appropriate time determined by the Board, but before the Board votes on any issue under discussion. Owners or their designated representatives shall be permitted to speak regarding that issue. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue.

(d) Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

#### 4.9 Budget.

(a) The Board of Directors shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year. Within thirty days after

the adoption of any Budget by the Board, the board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen days nor more than sixty days after delivery of the summary.

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

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

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

4. 10 Association Agreements. Any agreement for professional management of the Property or any contract purporting to bind the Association may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice.

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

4. 11 Indemnification. Each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of him or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law. The power to collect money through liens shall be available to pay for this indemnification.

4.12 Certain Rights and Obligations of the Association.

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

(b) Other Association Functions. As of the date of execution hereof, the Association shall provide the following services to its members: mowing the front and back lawns on each Lot each week; fertilizing and placing weed control in the rock areas in the fronts and sides of houses; aerating twice a year; trimming bushes in the spring (unless requested not to do so, in writing, by a Lot Owner); starting the irrigation system in the spring and draining it in the fall; and snow removal of the front sidewalks and driveways (on an as needed basis) when there is an accumulation of more than one and one-half inches of snow. Assessments will be assessed against each Lot subject to this Declaration for such costs as Common Expenses of this Association (but not of the Master Association). The Association, through the Board, may modify, amend or change the scope of these activities in its sole discretion without the prior approval of any Lot Owner. The Association may also undertake any activity, function or service for the benefit of, or to further the interests of all, some, or any Members on a self-supporting Special Assessment basis.

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

ARTICLE 5: COMMON AREAS. The Fountain Greens Patio Homes Homeowners Association shall have no responsibility of maintenance and upkeep of the Common Areas located adjacent to or near the Property. The duties and obligations of maintenance and upkeep of the Common Areas within the Subdivision shall be the responsibility of the Master Association, which is the owner of all of the Common Areas within the Subdivision.

ARTICLE 6: ASSESSMENTS

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

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

personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Lot. The personal obligation for delinquent assessment shall not pass to such Owner's successors in title as a personal obligation unless expressly assumed by them.

6.2 Purpose of the Assessments. The Common Expense Assessment shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Property and the Members of the Association. Such purposes shall include but not be limited to the obligations of the Association under section 4.12.

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

6.4 Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense incurred by the Association, or for the funding of any operating deficit incurred by the Association provided that any such assessment shall have the approval of Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose. Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance herewith.

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

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

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

6.6 Individual Assessments. The Board of Directors shall have the right to levy any Owner or Owners amounts as provided for by this Declaration. No Individual Assessment shall be levied

until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws or Rules of the Association. Individual Assessments shall be collected as part of the Costs of Enforcement.

6.7 Levy of Assessments. Common Expense Assessments shall be levied on all Lots based upon a budget of the Association's cash requirements to accomplish the purposes set forth in this Section 6. The Common Expense Liability shall be prorated among the Lots. The omission or failure to the Board of Directors to levy the Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay in the future.

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

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

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

6.8 Amount and Due Date of Assessments. Fines and Individual Assessments shall be due and payable as established by the Board of Directors. At the time of execution hereof, individual assessments for homeowners dues are as follows; \$65.00/month for patio homes and \$55.00/month for each half of a duplex.. Assessments are due on the 10<sup>th</sup> day of the month with a late fee of \$25.00 if not paid by the 25<sup>th</sup> of the month.

Common Expense Assessments shall be levied on an annual basis and shall be due and payable in monthly installments. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

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

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

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

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

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

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

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

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

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

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except those liens that have priority under Colorado law.

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

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

In any action by the Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights

any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust.

The Assessment Lien hereby created shall also be a lien upon all of the rents and profits or the encumbered Lot; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgage of a Lot under any assignment of rents given in connection with a first deed of trust. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

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

6. 11 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for its expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be credited to the Owners in proportion to their Allocated Interests or credited to them to reduce their future Assessments.

6. 12 Working Capital Fund. Each Owner, at the time the Owner acquires his or her Lot, shall make a non-refundable contribution to the Working Capital Fund of the Association in the amount equal to at least two month's installment of the Common Expense Assessment for such Lot. Such sum shall be held in trust as a reserve for working capital, and may be used for unforeseen expenditures or to purchase any additional equipment or services as the Board deems necessary or appropriate. Such payment shall not be considered as an advance payment of the regular Common Expense Assessment or relieve an Owner from making the regular monthly payment of the Common Expense Assessment as the same becomes due.

6. 13 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request delivered personally or by certified mail, return receipt requested, to the Association's Registered Agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within fourteen business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is timely furnished to the Owner or First Mortgagee, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request.

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

#### ARTICLE 7: RESTRICTIVE COVENANTS AND OBLIGATIONS

7.1 Use and Occupancy of the Lots. Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot. No Lot within the Property shall be used for any purpose other than single-family residential purposes, which includes a duplex or patio home, as generally defined or for a home occupation so long as (a) such occupation is allowed by applicable Zoning Codes, (b) employs no outside employees, and (c) requires no signage or parking, provided, however, that uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited unless approved by the Board of Directors.

7.2 Use of the Common Areas. Each Owner and his or her Guests or Occupants may use the appurtenant Common Areas in accordance with the purpose for which they are intended, pursuant to the Declaration for the Master Association.

7.3 Pets Within the Property. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on any portion of the Property; except that dogs, cats or other household animals may be allowed only in Lots occupied by Owners (not renters) so long as they are not raised, bred or maintained for any commercial purpose and are kept in such number or in such manner as to create a nuisance or inconvenience to any residents of the Property. The following purebred dogs are prohibited in the Subdivision: Pit bull, Rottweiler, Chow and Shar-Pei. Additionally, any dog that is a mixed breed comprising at least half of the foregoing breeds shall also be prohibited. It shall be the obligation of the Owner to prove that his or her dog has less than one half of the foregoing breeds.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take such action or actions as it deems reasonably necessary to correct the violation, to include, after Notice and Hearing, directing permanent removal of the pet or pets from the Property.

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

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Property or incurred by

the Association in cleanup after such pets may be levied after Notice and Hearing against such pet's Owner as an Individual Assessment in accordance with Paragraph 6.6 hereof.

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

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

7.5 Portable Basketball Hoops. Portable basketball hoops shall be prohibited on the Property.

7.6 Vehicular Parking, Storage and Maintenance.

(a) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on a Lot only if such parking or storage is done wholly within the enclosed garage located on a Lot or otherwise screened from any street adjoining the Lot by a fence at least six (6) feet high. Any such vehicle may be parked on a Lot as a temporary expedience for loading, unloading, delivery, or emergency not to exceed 48 hours. The foregoing restriction shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of any Lots or any improvements located thereon. All street parking shall be in compliance with applicable governmental laws and regulations.

(b) Except as hereinabove provided and allowed by law, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on or within the Property. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof (if such owner thereof can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter the Association shall have the right to remove the

vehicle at the sole expense of the Owner thereof. Said expenses to be levied against the Owner of the vehicle as an Individual Assessment in accordance with Article 6.6 hereof.

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

(d) Notwithstanding the foregoing provisions, the parking of a motor vehicle by an occupant of a unit on a street or driveway in the subdivision shall be allowed if the vehicle is required to be available at designated periods at the occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

- (1) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- (2) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire, law enforcement, ambulance or emergency medical services;
- (3) The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- (4) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants to use streets, driveways and guest parking areas within the subdivision.
- (5) The vehicle is not otherwise abandoned or inoperable and does not violate any local ordinances.

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

7.8 Prohibition of Certain Activities. Nothing shall be done or kept in any Lot or improvement thereon which would be in violation of any statute, ordinance, regulations, or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on in any Lot or in the Common Areas, nor shall anything be done

therein which may be or may become an annoyance or nuisance to others. No sound shall be emitted on any part of the Property which is unreasonably loud or annoying.

7.9 Antennas/Swamp Coolers.

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

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

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

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

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

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

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

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

7.12 No Further Subdivision. No Lot may be re-subdivided.

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

7. 14 Signage.

(a) With the exception of one "for sale" or "for rent" sign per Lot, which shall not be larger than 18 by 24 inches and political signs described in subsection (b), no signs, advertising devices or billboards shall be displayed within the Property unless written approval thereof is granted by the ACC.

(b) Notwithstanding the foregoing, an Owner or Occupant may display a political sign on his or her property or in a window of the Owner's or Occupant's residence; except that no political signs shall be displayed earlier than 45 days before an election and seven days after an election. One political sign per political office or ballot issue that is contested in a pending election shall be allowed, with the maximum dimensions of such signs being 36 inches by 48 inches. However, to the extent that the foregoing restrictions are more restrictive than any applicable ordinance, rule or regulations of the City of Grand Junction or Mesa County, the governmental ordinances, rules and/or regulations shall control. If no such regulations exist, the limitations contained herein shall control. As used herein, "Political Sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate.

7. 15 Screening. All wood piles or storage areas of any kind shall be kept screened by adequate vegetation to conceal them from view as much as possible.

7. 16 Residence Exteriors. The Architectural Control Committee shall consider the following guidelines in approving residence exteriors:

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

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

7. 17 Tanks. No tanks of any kind, above or below ground, shall be permitted.

7. 18 Lights. All exterior lights and light standards, other than ordinary low intensity lights, shall be subject to approval by the ACC for harmonious development and prevention of lighting nuisances.
7. 19 Hazardous Activities. No activities shall be conducted within the Property and no improvements constructed within the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Property, and no open fires shall be lighted or permitted within the Property, including burning of trash or rubbish, except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.
7. 20 Utility Lines. All gas lines, electric lines, telephone lines and television cable shall be buried underground from their primary source at the Lot line at the Owner's sole expense.
7. 21 Drainage. Except as in approved grading, drainage and erosion control, no structure shall be placed or located in such manner that will obstruct, divert or otherwise alter the natural water drainage courses and patterns, and no landscaping or changes to the existing terrain shall be made which shall obstruct, divert or otherwise alter such drainage. ACC will approve all landscaping and site plans. Landscaping of all Owner Maintenance Areas must be completed within one year after a building permit is issued.
7. 22 Fences. No hedges or fences shall be permitted within the subdivision which are higher than six feet, unless specific written permission is given therefor by the ACC. In determining whether such permission should be given, the ACC shall consider the topography and desires of the neighborhood. On double frontage and corner lots, fences up to four feet in height may be placed on the property line along the street except in the front yard setback along the street that the homes face. Fences in these front yards must comply with City of Grand Junction Zoning and Development Code requirements. Exception: No fence is allowed along 25 Road in the building setback except the wrought iron fence on the property line provided by the developer and fences four feet in height on side property lines that connect with the developer provided fence at right angles.
7. 23 No Mining. No property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, scones, gravel or earth, unless by written approval of the ACC.
7. 24 Other Buildings. Detached accessory buildings shall not be constructed except upon prior ACC approval. Buildings shall not exceed seven (7) feet in height, with roof materials and color being the same as the residence.

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

7.26 Maintenance and Installation of Trees. Each Owner, by acceptance of a Deed therefor, covenants and agrees and shall be personally obligated to install, maintain and replace trees upon his or her Lot, as referenced in the approved Landscaping Plan for Fountain Greens Subdivision. The approved Landscaping Plan is shown on Exhibit B attached to the original Declaration for the Master Association. Trees and shrubs must not obstruct sidewalks. It shall be the Lot Owner's responsibility to clear the sidewalks adjacent to his/her Lot from intruding trees and/or shrubs. Notwithstanding the foregoing, the following trees are not allowed in the subdivision: globe willows; Chinese elms; cottonwoods (any variety); and Russian olive trees. All volunteer elm trees must be removed by the Lot Owner. Such trees already planted and existing as of the date of execution hereof are exempt, but at such time as they die or are otherwise removed, no replacement trees of the foregoing types shall be replanted in their place.

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

7.28 Flags. An Owner or Occupant may display the American flag on his or her property, in a window of the Owner's or Occupant's residence, or on a balcony adjoining the Owner's or Occupant's property if the American flag is displayed in a manner consistent with the Federal Flag Code, Public Law 94-344; 90 Stat. 810; 4 U.S.C. 4 to 10. The Association may adopt reasonable rules regarding the placement, manner of display of the American flag, and the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole. An Owner or Occupant may display a service flag bearing a star denoting the service of the Owner or Occupant or a member of the Owner's or Occupant's immediate family in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's or Occupant's residence. The maximum dimensions allowed shall be nine inches by sixteen inches.

#### ARTICLE 8: EXTERIOR MAINTENANCE AREA AND SPECIAL EASEMENT

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

8.2 Owner Maintenance Area. Except as provided for in Section 4.12, each Owner shall maintain the patio, lawn and garden area within his or her Lot and adjacent to his or her

Residence, including but not limited to the irrigation line on the Property, except that if the main line is damaged, the Master Association shall be responsible for such repair or replacement. The Association shall have the right to promulgate reasonable rules and regulations regarding such maintenance.

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

8.4 Special Easement. The Association, the Board of Directors, and their respective representatives shall have a nonexclusive easement to enter upon and use each Lot as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Declaration, as amended.

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

8.6 Party Walls.

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

(b) The cost of reasonable repair and maintenance of a party wall damaged or destroyed without the fault of an Owner shall be shared equally by the Owners of all Residences of which such wall is a part. In such event, if an Owner of a Residence of which such wall is a part restores or reconstructs it at his or her sole cost, any other Owners of Residences of which such wall is a part shall contribute and share equally with such Owner in the cost of such restoration or reconstruction.

(c) Notwithstanding the provisions of subsection (b), the cost of reasonable repair and maintenance of a party wall damaged or destroyed through the negligent or intentional act or omission of an Owner shall be borne exclusively by such Owner. Any other Owner of a Residence of which such wall is a part may cause the repair or reconstruction of such party wall,

and the Owner whose negligence or intentional acts or omissions caused such damage or destruction shall promptly reimburse the reasonable costs of such repair.

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

#### ARTICLE 9: INSURANCE/CONDEMNATION

9.1 Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who were without compensation from any definition of "employee" or similar expression. The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force.

The policy must include a provision that calls for ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason.

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

#### 9.2 Additional Insurance.

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

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

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

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

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

9.4 Separate Insurance. No owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

#### ARTICLE 10: MAINTENANCE, REPAIR AND RECONSTRUCTION

10.1 By the Master Association. The Master Association shall be responsible for the maintenance, repair and reconstruction of all of the Common Areas in accordance with its Declaration.

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

#### ARTICLE 11: ELIGIBLE MORTGAGEE RIGHTS

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

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

#### ARTICLE 12: DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION

12.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Colorado law.

12.2 Amendments by Owners. This Declaration may be amended by written agreement by Owners of Lots to which at least thirty-four percent (34%) of the votes in the Association are allocated; provided, however, an amendment may not change the uses to which a Lot is restricted, except by unanimous consent of the Owners.

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

Each amendment to the Declaration must be recorded with the Mesa County Clerk & Recorder's office.

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

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

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

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

12.3 FHA/VA Approval. If the Property has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, then the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: annexation of additional properties and amendment of this Declaration and the assessment of a Special Assessment.

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

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

#### ARTICLE 13: ARCHITECTURAL CONTROL

13.1 No Construction Without Approval. No buildings or exterior improvements of any kind, including (without limitation) driveways leading to the various structures within the Lots shall be constructed, remodeled or altered in any fashion on any Lot nor may any vegetation be altered or destroyed, nor any landscaping performed unless two complete sets of plans and specifications for such construction or alteration or landscaping are submitted to and approved by the Board, or if the Board appoints an ACC, the ACC, prior to the commencement of such work. All applications shall be submitted to the Board, in writing, and all decisions of the Board and ACC shall be given in writing. In the event the Board or ACC fails to take any action within thirty (30) days after complete architectural plans and specifications for such work have been submitted to it, then all of such submitted plans and specifications shall be deemed to be approved; provided, however, that the Board or the ACC may extend this deadline, with or without cause, for a period not exceeding an additional thirty (30) days, by mailing a written notice to the applying Owner within the initial thirty (30) day period. The Board and/or the ACC may adopt rules and regulations for processing of such applications which shall, upon adoption, be binding upon all subsequent applications. The number and qualifications of members of the ACC, if one is appointed, shall be as determined by resolution of the Board.

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

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

13.4 Variances. Where circumstances such as topography, location of trees, brush, rock outcroppings, area aesthetic considerations, or other matters require or allow, the Board may, by two-thirds vote, allow reasonable variances as to any of these covenants, including required sizes of structures, setback or side yard requirements, on such terms and conditions as it shall require. Opinions of all adjoining property owners shall be considered in any such decisions. Variances

must be in compliance with the approved Final Plat and Plan, as well as the City of Grand Junction Zoning and Development Code.

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

13.6 Diligence. After approval of any plan in accordance with this Article, the same shall be completed with due diligence in conformity with conditions of approval, if any. Failure to adhere to any term of approval shall operate automatically to revoke the approval, and the Board and ACC may require the property to be restored as nearly as possible to its previous state. The time for completion of any such work may be extended by the ACC.

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

13.8 Limitations on ACC.

(a) Neither the Association nor the Architectural Control Committee may adopt a restrictive covenant that prohibits or limits xeriscape landscaping, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass.

(b) The Architectural Control Committee may take enforcement action against an Owner who allows his or her existing landscaping to die; except that:

- (1) Such enforcement action shall be suspended during a period of water use restrictions declared by the jurisdiction in which the Association is located, in which case the Owner shall comply with any watering restrictions imposed by the water provider for the Association;
- (2) Enforcement shall be consistent within the community and not arbitrary or capricious; and
- (3) Once the drought emergency is lifted, the Owner shall be allowed a reasonable and practical opportunity, as defined by the

association's Board, with consideration of applicable local growing seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod.

(c) An Owner may remove trees, shrubs, or other vegetation to create a defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado State Forest Service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable Association standards regarding slash removal, stump height, revegetation, and contractor regulations.

(d) The Architectural Control Committee shall not place a procedural step or burden, financial or otherwise, on an Owner who seeks approval for a landscaping change which includes xeriscaping, including but not limited to the following:

- (1) An architect's stamp;
- (2) Preapproval by an architect or landscape architect retained by the Board;
- (3) An analysis of water usage under the proposed new landscape plan or a history of water usage under the Owner's existing landscape plan; and
- (4) The adoption of a landscaping change fee.

(e) The following definitions shall apply.

- (1) "Restrictive covenant" means any covenant, restriction, bylaw, Board policy of practice or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.
- (2) "Turf grass" means continuous plant coverage consisting of hybridized grasses that, when regularly mowed, form a dense growth of leaf blades and roots.
- (3) "Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate

plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

13.9 Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

#### ARTICLE 14: DISCLOSURES, INSPECTIONS AND RECORDS

##### 14.1 Public Disclosures by Association.

(a) Pursuant to CRS § 38-233.3-303(5), the Association shall make the following information available to Owners upon reasonable notice in accordance with Colorado law: the name of the Association; the name of the Association's designated agent or management company, if any; a valid physical address and telephone number for both the Association and the designated agent or management company, if any; the name of the subdivision; the initial date of recording of the Declaration; and the reception number or book and page for the main document that constitutes the Declaration. If the Association's address, designated agent or management company changes, the Association shall make updated information available within ninety days after the change.

(b) Within ninety (90) days after the end of each fiscal year hereafter, the Association shall make the following information available to Owners upon reasonable notice:

- (1) the date on which its fiscal year commences;
- (2) its operating budget for the current fiscal year;
- (3) a list, by unit type, of the Association's current assessments, including both regular and special assessments;
- (4) its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (5) the results of its most recent available financial audit or review;
- (6) a list of all Association insurance policies, including but not limited to property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits policy deductibles, additional named insureds, and expiration dates of the policies listed;

- (7) all the Association's Bylaws, Articles and Rules and Regulations;
- (8) the Minutes of the Board and member meetings for the fiscal year immediately preceding the current annual disclosure; and,
- (9) the Association's responsible governance policies adopted under CRS § 38-33.3-209.5.

It is the intent of this subsection to allow the Association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to Owners at their convenience. Disclosure shall be accomplished by one of the following means: posting on an internet web page with accompanying notice of the web address via first class mail or e-mail; the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

(c) Except as otherwise provided herein, all financial and other records shall be made reasonably available for examination and copying by any Owner and such Owner's authorized agents.

- (1) Notwithstanding paragraph (c) of this subsection, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as an Owner without prior written consent of the Board.
- (2) Without limiting the generality of paragraph (c) of this subsection, without the prior written consent of the Board, a membership list or any part thereof may not be:
  - (a) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;
  - (b) Used for any commercial purpose; or
  - (c) Sold to or purchased by any person.
- (3) The Association may charge a fee for copies provided to an Owner or Owner's representative which may be collected in advance but which shall not exceed the Association's actual cost per page, for copies of the Association records.

- (4) As used in this section, "reasonably available" means during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request, to the extent that:
  - (a) The request is made in good faith and for a proper purpose;
  - (b) The request describes with reasonable particularity the records sought and the purpose of the request; and
  - (c) The records are relevant to the purpose of the request.
- (5) This section shall not be construed to invalidate any other provision of the Declaration, Bylaws, the corporate law under which the Association is organized, or other documents that more broadly define records of the Association that is subject to inspection and copying by Owners, or that grants Owners freer access to such records; except that the privacy protections contained in subparagraph (c) of this section shall supersede any such provision.

14.2 Disclosure by Lot Owner Upon Sale of Lot.

(a) Unit Owners may request Association documents relating to a proposed sale of an Owner's Lot. The Association shall use its best efforts to accommodate a request by the seller for documents that are within the Association's control, in accordance with C.R.S. § 38-33.3-317.

(b) The Owner of each Lot shall be subject to the process of Colorado law, which currently requires that on and after January 1, 2007, every contract for the purchase and sale of a Lot shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

**THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BY LAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE**

ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

(c) The obligation to provide the disclosure set forth in this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs. It shall be an affirmative defense to any claim for damages that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.

(d) Upon request, the seller shall either provide to the buyer or authorize the Association to provide to the buyer, upon payment of the Association's usual fee pursuant to section 50(a)(3), all of the Association's governing documents and financial documents, as listed in the most recent available version of the Contract to Buy and Sell Real Estate promulgated by the real estate commission as of the date of the contract.

(e) All Lot Owners are hereby notified that except in the case of a foreclosure sale, upon request, the seller of a Lot within the Subdivision shall either provide to the buyer or authorize the Association to provide to the buyer, upon payment of the usual Association fee, all of the Association's governing documents and financial documents, as listed in the most recent available version of the Contract to Buy and Sell Real Estate promulgated by the Real Estate Commission as of the date of the contract, or shall mail or deliver to the buyer, on or before the title deadline, copies of all of the following in the most current form available:

- (1) the Bylaws and rules of the Association;
- (2) the Declaration;
- (3) Its Policies;
- (4) any Party Wall Agreements;

- (5) minutes of the most recent annual Owner's meeting and of any Board meetings that occurred within the six months immediately preceding the title deadline;
- (6) the Association's operating budget;
- (7) the Association's annual income and expenditures statement; and,
- (8) the Association's annual balance sheet.

(f) The Association shall use its best efforts to accommodate a request by a seller for documents that are within the Association's control, in accordance with CRS § 38-33.3-317.

#### 14.3 Association Records.

(a) The Association shall keep financial records sufficiently detailed to enable the Association to comply with C.R.S. §38-33.3-316 (8) concerning statements of unpaid assessments.

- (1) The Association shall keep as a permanent record the minutes of all meetings of Owners and the Board, a record of all actions taken by the Owners or Board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Board in place of the Board on behalf of the association, and a record of all waivers of notices of meetings of Owners and of the Board or any committee of the Board.
- (2) The Association or its agent shall maintain a record of Owners in a form that permits preparation of a list of the names and addresses of all Owners, showing the number of votes each Owner is entitled to vote.
- (3) The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. All financial and other records shall be made reasonably available for examination and copying by any Owner and such Owner's authorized agents. The Association may charge a fee, not to exceed the Association's actual cost per page, for copies of association records.
- (4) A membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as a unit Owner without the prior written consent of the Board.

Without such consent, a membership list or any part thereof may not be:

- I. used to solicit money or property unless such money or property will be used solely to solicit the votes of unit Owners in an election to be held by the Association;
  - ii. used for commercial purposes; or
  - iii. Sold to or purchased by any person.
- 
- (5) The Association may charge a fee, which may be collected in advance, but which shall not exceed the Association's actual cost per page, for copies of Association records.
  - (6) As used in this section, "reasonably available" means available during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request, to the extent that the request is made in good faith and for a proper purpose; the request describes with reasonable particularity the records sought and the purpose of the request; and the records are relevant to the purpose of the request.

(b) In addition to the records specified herein, the Association shall keep a copy of each of the following records at its principal office:

- (1) Its Articles of Incorporation;
- (2) The Declaration;
- (3) The Covenants;
- (4) Its Bylaws;
- (5) Resolutions adopted by its Board relating to the characteristics, qualifications, rights, limitations, and obligations of Owners or any class or category of Owners;
- (6) The minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past three years;

- (7) All written communications within the past three years to Owners generally as Owners;
- (8) A list of the names and business or home addresses of its current Directors and officers;
- (9) Its most recent annual report, if any; and,
- (10) All financial audits or reviews conducted pursuant to C.R.S. § 38-33.3-303 (4) (b) during the immediately preceding three years.

(c) This section shall not be construed to affect:

- (1) The right of an Owner to inspect records:
  - (a) Under corporation statutes governing the inspection of lists of shareholders or members prior to an annual meeting; or
  - (b) If the Owner is in litigation with the Association, to the same extent as any other litigant; or
- (2) The power of a court, independently of this Article, to compel the production of Association records for examination on proof by an Owner of proper purpose.

(d) This section shall not be construed to invalidate any provision of the Declaration, Bylaws, the corporate law under which the Association is organized, or other documents that more broadly defines records of the Association that is subject to inspection and copying by Owners, or that grants Owners freer access to such records.

#### ARTICLE 15: POLICIES: LOT OWNER EDUCATION

15.1 Association Policies. To promote responsible governance, the Association shall:

- (a) Maintain accurate and complete accounting records; and
- (b) Adopt policies, procedures, and Rules and Regulations concerning:
  - (1) collection of unpaid assessments;
  - (2) handling of conflicts of interest involving Board members;

- (3) conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
- (4) enforcement of Covenants and Rules, including notice and hearing procedures and the schedule of fines;
- (5) inspection and copying of Association records by Owners;
- (6) investment of reserve funds;
- (7) procedures for the adoption and amendment of policies, procedures, and rules; and,
- (8) procedures for addressing disputes arising between the Association and Owners.

15.2 Lot Owner Education. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Board under Colorado Law. The timing and criteria for compliance with this section shall be determined by the Board.

15.3 Review or Audits. At the discretion of the Association Board, the books and records of the Association shall be subject to an audit using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant, except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting. An audit shall only be required when the Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000) and an audit is requested by the Owners of at least one third (1/3) of the units represented by the Association. A review shall be required only when requested by the Owners of at least one-third (1/3) of units represented by the Association. Copies of an audit or review shall be made available upon request to any Owner beginning no later than thirty days after its completion.

15.4 Association Board Conflicts of Interest.

(a) The provisions of C.R.S. Section 7-128-501 of the Colorado Revised Nonprofit Corporation Code shall apply to conflicts of interest of members of the Board of Directors. Generally speaking, this section provides that a "conflicting interest transaction" involves a contract, transaction or other financial relationship between the Association and a director or

between the Association and a party related to a director or between the Association and an entity in which a director of the Association is also a director officer of has a financial interest. If a Board member knows or reasonably should know of a potential conflict, the member shall so advise the Board in an open meeting, prior to any discussion or action on that issue. After making such declaration, the disinterested members of the board may, in good faith, authorize, approve or ratify the conflict of interest transaction or allow the disclosing member to vote on the matter, even if such number of disinterested members is less than a quorum. This section shall not be construed to invalidate any provision of the Declaration, Bylaws or other documents that more strictly defines conflicts of interest or contains further limits on the participation of Board members who may have conflicts of interest.

(b) As used in that section:

- (1) "Corporation or "Nonprofit Corporation" means the Association.
- (2) "Director" means a member of the Association's executive Board.
- (3) "Officer means any person designated as an officer of the Association and any person to whom the Board delegates responsibility under this article, including without limitation, a managing agent, attorney, or accountant employed the Board.

#### ARTICLE 16: GENERAL PROVISIONS

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

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

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

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

16.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed, in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by a notice duly filed with the Office of the Secretary of State of Colorado (Change of Registered Agent).

16.6 Conflict. The Documents are intended to comply with the requirements of the Act and the Colorado Nonprofit Corporation Act. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

16.7 Mergers. The Property may be merged or consolidated with another Property of the same form of ownership by complying with §33-33.3-221 of the Act.

16.8 Arbitration/Attorney's Fees. All matters regarding the interpretation, application and enforcement of this Declaration shall be submitted to binding arbitration before the American Arbitration Association or such other forum as may be agreed upon by the parties. The arbitrator shall have authority, in the sound exercise of discretion, to award the party whose position is substantially favored, such party's costs and expenses, including reasonable attorney's fees.

16.9 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

16.10 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

16.11 Modification of Declaration Due to Change in Law. If Colorado law changes after the recording of this Declaration, any provision contained herein that is thereafter illegal or invalid after such change shall be void and of no effect, as if the Declaration had been modified in order to comply with then current law.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the day and year first above written.

