

25 PAGE DOCUMENT

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR**

BRANDON ESTATES

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRANDON ESTATES** ("Declaration") is made this 10th day of August, 2006, by Brandon Enterprises, LLC, a Colorado limited liability company ("Declarant").

ARTICLE I. RECITALS

Section 1.1. The Real Property. The Declarant is the owner of certain real property located in the City of Fruita, County of Mesa, State of Colorado, legally described as all of Brandon Estates, City of Fruita, Mesa County, Colorado, to wit: Brandon Estates LLC and referred to in this Declaration as the "Real Property" or the "Property".

Section 1.2 Creation of Subdivision. Declarant desires to impose a general plan for the improvement, development and maintenance of the Property, and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enhancing, maintaining and protecting the value and desirability of the Property. Declarant intends to provide for residential home ownership of the Real Property pursuant to the provisions of the Colorado Revised Statutes and to define the character, duration, rights, obligations and limitations of residential home ownership of Brandon Estates, and for such purpose, executes this "Declaration."

Section 1.3. The Project. Declarant has prepared a Plat Map of the property dividing the Property into individual Lots and the Plat Map shall be recorded concurrently with the Declaration. Each Lot shall be numbered on the Plat. The term "Subdivision" shall collectively mean the Real Property and the other improvements located or to be located on the Real Property and be called "Brandon Estates" or "Subdivision" with the exception of two (2) Lots listed in the Final Plat, Block 1 Lot 15 and Block 2 Lot 21, which are not subject to this Declaration. Declarant deems it desirable to set aside a portion of the Property as common areas for the use of the owners of the Property, and to establish a Colorado nonprofit corporation, Brandon Estates Homeowners Association (the "Association"), to which such common areas, water rights and irrigation systems from time to time shall be conveyed,

Section 1.4. The Declaration. Declarant covenants, agrees and declares that the Property shall be held, sold in fee simple, conveyed, encumbered, leased, used, occupied and improved, subject to the following limitations, restrictions, easements, covenants, conditions, reservations, liens and charges, all of which are declared and agreed to be in furtherance of a general plan for the improvement and development of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall bind and benefit of all parties having or acquiring any right, title or interest in the Property or any part of it and the successors in interest of such parties, and are imposed upon the Property and every part of it as equitable servitudes which may be enforced by the Declarant, its successors and assigns, each Owner, his or her successors and assigns, or by the Association, its successors and assigns.

ARTICLE II. DEFINITIONS

Section 2.1. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 2.2. "Assessment" shall mean and refer to any or all of the following:

- (a) "Regular Assessment" shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot as provided for in Section 5.4.
- (b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association or Declarant for materials or services furnished to the Owner or his Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his employees, guests or invitees, or for excessive use or special use of the services or facilities provided by the Association, including, but not limited to, parking, trash removal and maintenance of improvements, or for any other purpose for which this Declaration specifies the imposition of a special assessment.
- (c) "Capital Improvement Assessment" shall mean and refer to a charge against any Lot representing a portion of the cost of the Association for the installation, construction, expected or unexpected repair or replacement of any capital improvements (including the necessary fixtures and personal property related to it) on the Common Area or any other portion of the Property upon which the Association may be required to install, maintain, repair or replace any capital improvements as provided in this Declaration, including without limitation reserves for repair or replacement of existing capital items and acquisition, construction, and installation of new improvements.

Section 2.3. "Association" shall mean and refer to Brandon Estates Homeowners Association, Inc., a nonprofit corporation, incorporated under Colorado law.

Section 2.4. "Association Water" shall mean and refer to all shares of the capital stock of and any other water or water rights, ditch or ditch rights, reservoir or water storage rights appurtenant to any portion of the Property or used in connection with any portion of the Property and owned or controlled by the Association.

Section 2.5. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 2.6. "Bylaws" shall mean the Bylaws of the Association as they may be amended from time to time.

Section 2.7. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at 38-33.3-101, et seq., as it may subsequently be amended from time to time.

Section 2.8. "Common Area" shall mean any and all real property composed of Tracts A

and E to be open space, and the improvements and fixtures on it owned or leased by the Association for the common non-discriminatory use and enjoyment of the Members and the public without limitation plus any street or other lighting fixtures owned or controlled by the Association and signage on any Common Area or for the general benefit of the Subdivision or Owners or public, whether or not located in the Common Area. The Common Area shall be as shown on the recorded plat of the Property and described in the Map.

Section 2.9. "Common Expenses" shall mean and include expenditures made and liabilities incurred, by or on behalf of the Association.

Section 2.10. "Conveyance" shall mean and refer to conveyance of a fee simple title, or lease of any part of the Property.

Section 2.11. "Declarant" shall mean and refer to Brandon Enterprises, LLC, a Colorado limited liability company, its successors and assigns designated in writing to be the successor of Declarant, subject to any limitation on transfer of special declarant rights contained in this Declaration or CCIOA.

Section 2.12. "Family" shall mean persons living together as a unit to include a maximum of four individuals not related by blood, marriage or adoption, in compliance with the Fruita Land Use Code.

Section 2.13. "Improved Lot" shall be a Lot upon which improvements have been constructed.

Section 2.14. "Irrigation Facilities" shall mean and refer to all improvements, equipment, facilities, and other real and personal property owned, operated, or maintained by the Association for the purpose of delivering water to the Lots and Common Area for irrigation purposes, and shall include, but not be limited to, all pumps, pipes, pipelines, risers, connectors, controls, siphons, filters, valves, and related parts and materials located in, under, or upon easements within the Subdivision, or elsewhere outside of the Subdivision.

Section 2.15. "Lot" shall mean and refer to each numbered lot of the Property described in the Map. Boundaries of a Lot shall be as shown and defined on the Plat Map of the Subdivision as recorded and amended.

Section 2.16. "Map" or "Plat Map" means the plan map of the Property attached to this Declaration pursuant to the requirements of CCIOA and includes the plat of the Property if a separate plat is attached to this Declaration. This Map of the final subdivision plat shall be subject to approval by the City of Fruita pursuant to the Fruita Land Use Code.

Section 2.17. "Member" shall mean and refer to every person or entity who holds a membership in the Association as provided in Section 3.1.

Section 2.18. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot, or any interest in it, including, but not limited to, the improvements on it, to secure the performances of an obligation.

Section 2.19. "Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of a Mortgage, and the holders of any indebtedness secured by Mortgage.

Section 2.20. "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust which are Mortgages.

Section 2.21. "Owner" shall mean and refer to Declarant and to any person or entity holding a record fee simple ownership interest in any Lot which is a part of the Property, including contract purchasers, but excluding Mortgagees (unless and until a Mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 2.22. "Property Manager" shall mean a person or entity hired by the Association as an independent contractor to oversee such tasks as may be delegated to the Property Manager by the Board of Directors from time to time.

Section 2.23. "Residence" means the single family dwelling unit located on a Lot.

Section 2.24. "Subdivision" shall mean all of the Property with the exception of two (2) Lots listed in the Final Plat, Block 1 Lot 15 and Block 2 Lot 21, which are not subject to this Declaration, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

Section 2.25. "Unimproved Lot" shall be a Lot upon which no improvements have been constructed.

ARTICLE III. THE ASSOCIATION

Section 3.1. Membership. Every Owner of one or more Lots in the Property shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article III. No person or entity other than an Owner of one or more Lots in the Property may be a Member of the Association. No Owner shall be entitled to sever his ownership interest in a Lot from membership in the Association, provided that this shall not be construed as precluding the Owner of a Lot from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership with any other person or persons.

Section 3.2. Allocation of Votes. The Association shall have one class of membership. Each Lot shall be allocated one (1) vote in the Association. If there are multiple Owners of a Lot, their vote shall be cast as a single vote. Members may vote by proxy in conformity with C.R.S. 38-33.3-310 of CCOA.

Section 3.3. No Cumulative Voting. In the election of directors, cumulative voting shall not be allowed.

Section 3.4. Membership Appurtenant. Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by conveyance of a Lot without additional action or documentation.

Section 3.5. Directors of the Association. The affairs of the Association shall be managed by a Board of Directors such that: (a) prior to conveyance of twenty five percent (25%) of the Lots, the Board of Directors shall consist of one (1) Director appointed by the Declarant; (b) not later than sixty (60) days after conveyance of twenty five percent (25%) of the Lots to owners other than Declarant, the Board of Directors shall consist of three (3) Directors with two (2) Directors appointed by the Declarant and one (1) Director elected by the Owners other than the Declarant; and (c) not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to owners other than Declarant, the Board of Directors shall

consist of three (3) Directors with two (2) Directors appointed by the Declarant and one (1) Director elected by the Owners other than Declarant. When Declarant relinquishes control of the Association to the Owners pursuant to Section 3.6(a), the Association shall be managed by at least five (5) directors comprising the Board of Directors. Directors shall serve for a term of two (2) years and shall meet the qualifications described in the Articles and Bylaws.

Section 3.6. Management of the Association.

- (a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (1) sixty (60) days after conveyance of 75% of the Lots which may be created to Owners other than Declarant; (2) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; or (3) two (2) years after any right to add new Lots was last exercised, Declarant may appoint and remove all Association officers and members of the Board of Directors of the Association, subject to the limitations stated in this section and conformity with C.R.S. 38-33.3-303(6) of CCIOA.
- (b) Upon the termination of the period of Declarant control specified in subsection 3.6(a) of this Article, the Owners shall elect a Board of Directors of at least five (5) members, who must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.
- (c) Notwithstanding anything to the contrary stated elsewhere in this Section 3.6, by a vote of sixty-seven percent (67%) of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a member appointed by Declarant.

Section 3.7. Quorum. A quorum will be deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the Board of Directors of the Association are present in person or by proxy, pursuant to Section 38-33.3-310, C.R.S., at the beginning of the meeting. A quorum will be deemed present throughout any meeting of the Board of Directors of the Association if persons entitled to cast fifty percent (50%) of the votes on the Board are present at the beginning of the meeting. For matters coming before an Association or Board of Directors meeting at which a quorum is present, a majority of votes from those present is sufficient to approve any manner excepting any provision of this Declaration that states otherwise.

ARTICLE IV. PROPERTY RIGHTS AND COMMON AREA

Section 4.1. Title to the Common Area. Prior to the sale of the first Lot by Declarant, Declarant shall convey fee simple title to the Common Area composed of Tracts A and E to be used as open space for the Owners and the public to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and liens and encumbrances and other title exceptions of record on the date of recording of this Declaration.

Section 4.2. Members' Basements of Enjoyment. Every Member shall have a non-exclusive right and easement in and to the Common Area, including, but not limited to, an easement for ingress and egress over and through the Common Area. Each such easement shall

be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area;
- (b) The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Area or any part of it for the purpose of improving the Common Area, provided any such encumbrance shall be expressly subordinate to the rights of the Members;
- (c) The right of the Association to suspend a Member's voting rights and Common Area use for any period during which any Assessment against his Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association, provided that any suspension of such voting rights, except for failure to pay Assessments shall be made only by the Association or a duly appointed committee thereof after notice and hearing given and held in accordance with the Bylaws;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members entitled to cast seventy-five percent (75%) of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than (60) days in advance;
- (e) The right of Declarant or its designees to enter upon the Common Area for purposes of construction and development of the Subdivision and for purposes of making repairs and remedying construction defects; provided such entry shall not interfere with the use of any Improved Lot unless authorized by the Lot Owner; and
- (f) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

Section 4.3. Delegation of Use. Any Member may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his licensees and invitees, or to his tenants or contract purchasers who are in possession of such Member's Lot.

Section 4.4. Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association nor release the Lot owned by him from the liens and charges created by CCIOA and this Declaration, by waiver of the use and enjoyment of the Common Area or the facilities on it or by abandonment of his Lot.

Section 4.5. General Restrictions. All Owners of Lots by their acceptance of their respective deeds, covenant and agree that the Common Area shall remain undivided, and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of Owners with respect to the operation and management of the

Property.

Section 4.6. Use of Open Space. Despite anything to the contrary stated elsewhere in this Declaration, any Open Space shall be used only for open space or other use which will not conflict with its function as an area for storm water runoff and detention. This Section shall not be amended without the consent of the City of Fruita.

ARTICLE V. COVENANT FOR FOR ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The undersigned, for each Lot within the Property (including any Lots subsequently added under Section 14.5.) covenants (and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in that deed, is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; and (b) all fees, charges, late charges, attorneys fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by Section 38-33.3-316(1), and Section 38.33-315(2), C.R.S. or any other provision of CCIOA (as it may be subsequently amended) or by any other applicable law.

All items set forth in this Section, from the time such items become due, shall be a charge on and covenant running with the land and shall be a continuing lien on the Lot against which each such item is charged. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. A valid acceleration of installment Assessment obligations may be made by the Board at any time any Assessment installment is at least thirty days overdue.

Each such item, together with interest, costs, and reasonable attorneys fees, shall also be the joint and several personal obligation of each person and entity who was the Owner of the Lot at the time when the item became due; provided that, this personal obligation shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may be exempt from liability for Assessments by waiver of use or enjoyment of Common Area, Association Water, or other assets or benefits of the Association, or by abandonment of any Lot.

The Association's lien on a Lot for Assessments 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 such exemption as against such Assessment lien.

Section 5.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety, or welfare of the residents in the Property; or for the benefit of the Common Area or Association Water; or for any other purpose of the Association, as those purposes are specified by this Declaration, the Articles, or as otherwise authorized by CCIOA or other applicable law.

Section 5.3. Initial Assessment

- (a) The initial Regular Assessment for Common Expenses of the Association shall be fixed in an amount set by, and made upon the resolution of, the Board of Directors of the Association.
- (b) After any Assessment has been made by the Association, Regular

Assessments shall be made no less frequently than annually based on a budget adopted by the Association as described elsewhere in this Declaration. Assessments may include, without limitation, Capital Improvement Assessments and allocations for reserves for repair or replacement of existing capital items and acquisition, construction, and installation of new improvements, all to the extent set forth in the approved budget upon which such Assessment is based.

- (c) Until the Board of Directors of the Association makes an Assessment, all expenses of the Association shall be paid by Declarant.

Section 5.4. Date of Commencement of Assessments; Due Dates. The first Regular Assessment for Common Expenses shall be adjusted according to the number of months remaining in the calendar year for which the Assessment is made, if less than a full year. Thereafter, the Board shall fix the amount of the annual Regular Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Regular Assessment shall be sent to every Owner subject to the Assessment. The due date(s) shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Special Assessments and Capital Improvement Assessments may be made by the Board at any time, except as limited by the Declaration, CCIOA or other applicable law.

Section 5.5. Expense Allocation. Except as otherwise stated in this Section, or as otherwise provided by CCIOA or other applicable law, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of Lots then in the Subdivision. If permitted by CCIOA or other applicable law, any Common Expense or portion of any Common Expense benefiting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

Section 5.6. Priority of Lien. The lien for Assessments, which includes without limitation all those items specified in subsections (a) and (b) in Section 5.1 of this Article V shall have the priority specified in CCIOA which, as of the date of the Declaration, is codified at Section 38-33.3-316(2), C.R.S. or other applicable law.

ARTICLE VI. BUDGET AND RECORDS

Section 6.1. Books and Records. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles and in compliance with CCIOA, Section 38-33.3-317. All books, records, and papers of the Association shall be available for inspection and copying by any Member or his representative during normal business hours upon notice of five (5) business days at the principal office of the Association. The Board of Directors may establish reasonable rules concerning notice to be given the custodian of the records by anyone desiring to inspect them, and payment of reproduction costs by the requesting Member not to exceed the Association's actual cost per page.

Section 6.2. Annual Budget. The Board of Directors shall cause to be prepared no less than annually an operating budget, balance sheet, and cash flow statement for the Association.

Section 6.3. Delivery of Budget. Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary.

Section 6.4. Ratification of Budget. Unless at the meeting Owners representing a majority of all Lots reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 6.5. Reserve Fund. As part of each annual budget, the Board of Directors shall include an amount which, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the placement of any personal property, fixtures, and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost, and any other relevant factors.

ARTICLE VII. NONPAYMENT OF ASSESSMENTS

Section 7.1. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent if any such Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at a rate not to exceed the maximum rate of interest (presently 21 % per annum) permitted by CCIOA or other applicable law. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same or, upon compliance with the notice provisions set forth in Section 7.2. below, foreclose the lien provided for in Section 5.1. above against the Lot(s) as to which the Assessment has not been paid, and in either case there shall be added to the amount of such Assessment and interest thereon, all costs which may be incurred by the Association in its collection thereof, including reasonable attorney's fees. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 7.2. Foreclosure Sale. A foreclosure sale related to an Assessment lien is to be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same in the name of the Association.

Section 7.3. Curing of Default. Upon the timely curing of any Assessment delinquency the Association is authorized to file or record, as the case may be, a certificate setting forth the satisfaction of such claim and release of such lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release, and other expenses incurred.

Section 7.4 Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale under it shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have under this Declaration and then applicable law, including without limitation a suit to recover a money judgment for unpaid Assessments, as

above provided.

ARTICLE VIII. ARCHITECTURAL CONTROL

Section 8.1. Architectural Approval. All improvements on any Lot shall be in compliance with the zoning approved by the City of Fruita. No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Property (including the Common Area), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, irrigation systems, fences, trash receptacles) be made until plans and specifications showing the nature, kind, shape, height, materials, location and other relevant information of the same have been submitted to and approved in writing by the Architectural Control Committee (the "Committee") as to harmony of external design and location in relation to surrounding structures, topography and other matters specified in this Article VIII except for Sections 8.6 through 8.10 and the first sentence of this Section 8.1. In the event said Committee, or its designated representatives fails to approve or disapprove such plans in writing within thirty (30) days after a plan has been submitted to it, the plans will be deemed to have been approved.

Section 8.2. Plan Submittal Procedure. All plans and specifications required to be submitted to the Committee under Section 8.1. must be submitted in the form of a complete application. A complete application shall mean submission by the Owner of three (3) copies of finished working drawings and specifications complying with provisions outlined in this Article.

Section 8.3. Plan Requirements. Residence plans must consist of: exterior elevations, a plot plan including property lines, set backs, easements, structures, driveways, any accessory structures, fences, proposed grading, plus floor plans indicating square footage. Exterior colors shall also be submitted.

Section 8.4. Permits and Fees. The Owner shall apply for and pay all fees for all permits and inspections required by the governing authorities and codes for any improvements covered by this Article VIII.

Section 8.5. Building. In considering the design of proposed improvements, the Committee shall consider, without limitation, maintaining compatibility with the natural setting of the Property and not permitting any proposed Residence or other improvement to dominate the surrounding Residences and area. A Residence shall be no more than two levels. The minimum square footage of heated living area for a Residence (excluding the garage, enclosed patios and decks, attics and unheated storage areas) in Brandon Estates shall be 2,000 square feet for all Lots.

Section 8.6. Completion. Approved projects must be completed within the later of six (6) months after issuance of a building permit or within six months after approval by the Committee if no building permit is required. Failure to complete work within the prescribed time may cause the approval to be rescinded and resubmittal will be required. The Committee may grant an extension under extenuating circumstances brought to its attention.

Section 8.7. Exterior Colors. Semi-transparent or solid colors in moderate hues only are acceptable, and must be approved by the Committee.

Section 8.8. Structures. Only new construction shall be permitted in the Subdivision. No structure shall be built or placed on the Property without submittal to, and approval by, the Committee in accordance with this Article VIII.

Section 8.9. Time of Construction. Subject to the time limits stated in Section 8.6, all projects approved by the Committee shall be diligently commenced and completed in compliance with this Declaration and all applicable laws, ordinances and codes. In addition, each Owner acquiring from Declarant any Lot(s) on which a Residence is not located at the time of purchase shall commence construction of a Residence within one year after the date of purchase, unless an extension is granted by the Committee prior to the expiration of that one year period.

ARTICLE IX. ARCHITECTURAL CONTROL COMMITTEE

Section 9.1. Composition of the Committee. The Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until Declarant has conveyed control of the Association to the Owners other than the Declarant, Declarant shall appoint the Committee. Reasonable effort shall be made to have a licensed architect as a Committee member. The power of the Declarant to "appoint", as provided herein, shall include without limitation the power to: initially constitute the membership of the Committee, appoint member(s) to the Committee upon the occurrence of any vacancy, and for whatever reason to remove any member of the Committee, with or without cause, at any time, and appoint a successor; and each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Declarant. All improvements within the Property constructed by Declarant during the period in which it appoints the Committee shall be deemed approved by the Committee without the issuance of any writing evidencing such approval.

Section 9.2. No Liability. Neither Declarant or the Association, nor the Committee or its members, shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any owner of property affected by these restrictions by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications which decision shall not be made arbitrarily or capriciously in compliance with CCIOA, Section 38-33.3-302, C.R.S. Any Owner submitting, or causing to be submitted, any plans or specifications, agrees and covenants on behalf of himself and his heirs, successors, legal representatives, and assigns that he will not bring any action or suit at law or in equity against the Declarant, the Association, the Committee, or any of the Members thereof to recover any such damage.

Section 9.3. Notice of Non-compliance or Non-completion. Notwithstanding anything to the contrary contained in this Declaration, after the expiration of one (1) year from the date of completion of construction of any improvements within the Property, such improvements shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all the provisions in this Article IX, unless actual notice of such non-compliance and non-completion, executed by the Committee or its designated representatives, shall appear of record in the office of the Clerk and Recorder of Mesa County, Colorado, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 9.4. Rules and Regulations. The Committee may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of this Article IX.

Section 9.5. Variances. Where circumstances (such as topography, location of property lines, location of trees, or other matters) require, the Committee, by the vote or written consent of a majority of the Members thereof, may allow reasonable variances evidenced in writing as to any of the covenants, conditions or restrictions contained in the Declaration under the jurisdiction of the Committee, on such terms and conditions as it shall require. The granting of a variance shall not operate to waive on any other occasion any of the terms and provisions hereof covered by the variance and shall not necessarily serve as a basis for subsequent variances with respect to any other request. The granting of any variance shall not affect in any way the Association's or Owner's obligation to comply with the ordinances of the City of Fruita and other applicable governmental laws or regulations.

Section 9.6. Appointment and Designation. The Committee may from time to time, by the vote or written consent of a majority of its members, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the Committee in all matters delegated.

Section 9.7. Review Fee and Address. Any plans and specifications shall be submitted in writing for approval together with a reasonable processing fee determined by the Board. The address of the Committee shall be the principal place of business of the Association or such other place as the Committee may from time to time designate in writing to the Board of Directors. The address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the Committee shall be kept.

Section 9.8. Inspection. Any member or agent of the Committee may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any property subject to the jurisdiction of the Committee as to its improvement or maintenance in compliance with the provisions thereof.

Section 9.9. General Provisions. The members of the Committee shall not be entitled to any compensation for services performed under this Article IX. The Declarant, its successors and assigns, all Owners of any Lot and their successors and assigns by their acceptance of their respective deeds, and the Association, shall be bound by and subject to the laws of the State of Colorado and ordinances of the City of Fruita and all other applicable governmental laws or regulations. No building or other structure or addition or change or alteration thereof shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on any of the real property within the Property, including the Common Area, which is in violation with any of the laws or ordinances of the City of Fruita or any other applicable governmental laws or regulations.

ARTICLE X. ASSOCIATION POWERS

Section 10.1. Authority. The Association shall have all rights, powers, and authority specified or permitted by: (a) CCIOA; (b) any other applicable law; (c) this Declaration; and (d) the Articles and Bylaws, to the extent not inconsistent with (a), (b) (c) or (d).

Section 10.2. Enforcement. The Association may take judicial action against any Owner to enforce compliance with any provisions of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance and exercise any other right or remedy for enforcement of this Declaration permitted by law after due consideration is given attempting to remedying the matter via mediation or arbitration. All of such rights and remedies of the Association shall be cumulative and nonexclusive. Upon violation of any of the conditions

contained in this Declaration by any Owner, or by any renter, invitee, guest or family member of any Owner, the Board shall have the following power: The Board shall notify the Owner in writing of the specific violation and shall set a time in the notice when the Owner may appear before the Board to review the facts of the violation. Within twenty (20) days after such hearing, the Board shall enter its decision and shall notify the Owner in writing. Included in the decision will be a statement by the Board on what action must be taken by the Owner to correct the violation and a time period for completion of the remedial action. If the Owner does not complete the remedial action as set forth in the decision, then the Board may commence legal proceedings in the courts of Mesa County seeking damages and/or specific performance of the covenants in this Declaration. The prevailing party may recover all costs and attorney fees incurred in any such proceeding.

Section 10.3. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate, or convey all or any part of the Common Area or the Association interest in Association Water or any other Association asset. However, no such encumbrance, dedication, or conveyance shall be effective except in an instrument signed by seventy-five percent (75%) of all Owners, including seventy-five percent (75%) of all Owners other than Declarant, agreeing to such encumbrance, dedication, or transfer has been recorded in the Mesa County records. Such instrument may be signed in counterparts that shall together constitute a single agreement.

Section 10.4. Management Agreement and Other Contracts.

- (a) The Association may utilize professional management in performing its duties. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon ninety (90) days prior written notice.
- (b) Any contracts, licenses or leases entered into by the Association while the Declarant controls the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee; at any time after termination of the Declarant's control or the Association, upon ninety (90) days prior written notice.
- (c) Notwithstanding anything to the contrary contained in this Section 10.4., the Association may enter into contracts, licenses and leases in violation of this Article X upon a waiver of any requirements contained herein by the Federal National Mortgage Association.

Section 10.5. Owner's Negligence. In the event that the need for maintenance or repair of the Common Area is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the Assessment as a Special Assessment or part of a Regular Assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot. A determination of the negligence or willful act or omission of any Owner or any member of the Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefore, shall be determined by the

Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

- (a) No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members, nor shall any Owner place any structure or fence, except those installed by Declarant whatsoever upon the Common Area.
- (b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors.

ARTICLE XI. USE RESTRICTIONS

Section 11.1. Delegation of Use. Any Owner may delegate, subject to any Bylaw, his right of enjoyment to the Common Area and use of Association Water to the members of his family residing with him, his tenants, or contract purchasers who reside on the Lot owned by that Owner.

Section 11.2. Declarant's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant to maintain during the period of construction and sale upon such portion of the properties as Declarant deems necessary such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to said construction and sale, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 11.3. Use of Property. In addition to the duties stated elsewhere in this Declaration, each Owner shall have the duty and obligation to perform and comply with the following restrictions to preserve the overall value of the entire Property.

- (a) Only one single family dwelling may be constructed on each Lot. Each single family dwelling may only be occupied by a single family. For use in the Declaration, the word family is defined in Section 2.11.
- (b) No portion of any Lot shall be used other than for residential purposes, except as expressly permitted by this subsection (b). No commercial activities of any kind shall be carried on in any portion of the Property except activities relating to the sale or rental of Lots, nor shall any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored on any such Lot. This subsection, however, shall not be construed so as to prevent or prohibit an Owner from maintaining his professional records or accounts, handling his personal or professional business or professional telephone calls, or occasionally conferring with business or professional associates on his Lot.
- (c) Maintenance, upkeep and repairs of any residence or other improvements on each Lot shall be the sole responsibility of the Owner thereof.

- (d) All utility lines, fixtures and equipment exclusively serving a Lot (excluding, for example, utility trunk lines) installed within the perimeter of that Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall not impair any easement or allow any condition to exist which will adversely affect the other Lots or their Owners.

Section 11.4. Household Pets. No animals, livestock, reptiles, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners of each Lot may keep up to four (4) animals over the age of six (6) months which are household pets, including but not limited to dogs and cats, which are generally kept within or about a dwelling, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident(s) of the Property. An Owner's right to keep household pet(s) shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such Owner's pet(s).

Section 11.5. Lots to be Maintained. The Owners shall keep, maintain, and repair their Lots and improvements on their Lots (including, for example, landscaping) in a neat, clean, cultivated, attractive, and well maintained condition, free from the accumulation of trash or debris. If any Owner fails to keep and maintain that Owner's Lot(s) or improvements in accordance with this provision, the Association may (but shall not have the obligation to) conduct such maintenance, repairs, or restoration and assess its cost as a Special Assessment to the Owner on whose Lot or improvement such maintenance or repairs were conducted.

Section 11.6. Temporary Structures. Time Limits For Construction. Except as expressly permitted by this Declaration, no structure of a temporary character, including but not limited to a house trailer, tent, shack, or outbuilding shall be placed or erected upon any Lot, and no Residence shall be occupied in any manner at any time prior to its being fully completed, nor shall any Residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction, alteration, repair or remodeling of a Residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work.

Section 11.7. No sign, graphic, or advertising device shall be placed on the Property except (a) one sign of not more than four square feet advertising a Lot for sale, and (b) political signs in support of candidates or ballot issues limited to the ninety day period including and immediately preceding the election date on which the candidates or issues will be voted upon. This provision shall not limit or preclude street, road, or residence identification signs or traffic control signs or devices.

Section 11.8. Antennas. Except to the extent expressly limited or prohibited by applicable federal or state law or regulation, no antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot outside of the residence on that Lot, except (a) a satellite dish not more than 36 inches in diameter or completely screened from view by solid fencing complying with the requirements of this Declaration, or (b) as permitted by the Association.

Section 11.9. Yard Ornamentation. All ornamentation in yards, such as figurines, plastic flowers, colored lights, windmills, bird baths or feeders, shall either be screened from

public view or approved by the Architectural Control Committee. This Section shall not apply to seasonal holiday decorations which are promptly removed after the holiday or to the display of the flag of the United States of America. No clotheslines, dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street. Any accessory building shall be a maximum of eight (8) feet in height and shall be subject to the review and approval of the Architectural Control Committee.

Section 11.10. Vehicular Parking, Storage and Repairs.

- (a) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motordriven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the Property only if such parking or storage is done wholly within the enclosed garage located on a Lot or is otherwise screened by a solid fence six (6) feet in height (even if the vehicle exceeds that height). Section 11.19., therefore further limits the location of such a fenced vehicle storage area. Any such vehicle may be parked as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvements located thereon. Further, the parking of emergency vehicles on the Property is permitted if it relates to the Owner's employment and is done in compliance with CCIOA, Section 38-33.3-106.5(1)(d), C.R.S.
- (b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on or within the Property. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein, provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof (if such owner 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. The Association has no authority over abandoned vehicles situated on public streets in the Property which is under the authority of the City of Fruita.
- (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, from adjoining Lots and other property, and the Common Area. 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.

Section 11.11. Nuisances. No nuisance shall be permitted on or within the Property, nor any use, activity or practice which is the source of annoyance or embarrassment to, or which offends or disturbs any residents of the Property, or which interferes with the peaceful enjoyment or possession and proper use of the Property, or any portion thereof by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant or its designees which are reasonably necessary to the development of and construction on the Property; provided, however, that such activities of the Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his Lot or the Common Area, or with any Owner's ingress and egress to or from his Lot and a public way.

Section 11.12. Lots Not to be Subdivided. No Lot shall be subdivided, except for the purpose of combining all or portions with one or more adjoining Lots, provided that no additional building site is created thereby. Not less than one entire Lot, as conveyed, shall be used as a building site.

Section 11.13. Underground Utility Lines. All electric, television, radio, and telephone line installations shall be placed underground, except that during the construction of any residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of the construction.

Section 11.14. No Hazardous Activities. No activities shall be conducted on the Property or within the improvements constructed on or within the Property which are or might be unsafe or hazardous to any person or property.

Section 11.15. No Annoying Light, Sounds or Odors. No light shall be permitted from any Lot which is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent Lot or property or Common Area. No sound shall be emitted from any Lot which is unreasonably loud or annoying and no odor shall be permitted from any Lot which is noxious or offensive to others. No firearms, explosives, air or BB guns, bows or similar devices shall be discharged on the Property.

Section 11.16. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Area, or any Lot, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All containers shall be removed from the street the same day and returned to their screened Area. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. All trash receptacles shall be screened from view of the street, neighboring Lots and the Common Area. No elevated tanks of any kind (oil, gas, water, etc.) shall be constructed on any Lot.

Section 11.17. Leases. The term "lease" as used herein, shall include any agreement for the leasing or rental of a Lot or any portion thereof, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his Lot

under the following conditions:

- (a) All leases shall be in writing;
- (b) All leases and lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration, and the Articles, Bylaws and rules and regulations of the Association, and failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease;
- (c) No lease shall be for less than thirty (30) days;
- (d) A copy of all leases must be kept on file with the Property Manager, and
- (e) The permanent address and telephone number of the Lot Owner must be kept on file with the Property Manager.

The provisions of (b) and (c) above shall be contained in each lease, but shall also be deemed to be implied terms of each such lease, whether or not actually contained in the lease.

Section 11.18. No Mineral Exploration or Development. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted or undertaken on any portion of the Property nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any portion of the Property. No derrick or other structure designed for exploration for oil or natural gas shall be erected, maintained, or permitted on any portion of the Property.

Section 11.19. Fences. No fencing, privacy walls or hedges exceeding three feet in height shall be constructed or permitted closer to any street than the nearest point of the residence on that Lot to that street. All fences shall not exceed six (6) feet in height and be constructed of wood or, if approved by the Architectural Control Committee in its sole discretion, vinyl or plastic to maintain the aesthetic quality of the Property. Chain link, cyclone or wire type fencing will not be permitted on the Lot.

Section 11.20. Service Area. Storage or accessory buildings (such as dog houses, tool sheds, firewood, garbage, barbecue type buildings or enclosures), non-portable or affixed outdoor furniture such as picnic tables, barbecues, hot tubs, etc., shall be reasonably screened from public and neighboring view.

Section 11.21. Climate Control. Placement of heat pump and condenser units shall provide visual screening and noise attenuation to the neighboring Lots and Common Areas. Use of solar heating systems is acceptable providing that the panels or collectors are integrated into the structure with regard to the overall appearance and design, subject to approval by the Architectural Control Committee. Window mounted and through the wall units are not allowed unless screened from the street, neighboring Lots and the Common Area.

Section 11.22. Structure. No home or garage shall be of the type known as "pre-built, pre-cut, modular, manufactured or mobile homes," regardless of its quality.

Section 11.23. Landscaping. Except as otherwise provided herein, the maintenance

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and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed thereon, and the interior of any fence on the boundary line of a Common Area and a Lot shall be the responsibility of the Owner(s) thereof. It shall be the duty and obligation of each Owner to complete the landscaping of his Lot inclusive of the front and back yards within six (6) months from issuance of a Certificate of Occupancy. The landscaping shall include at least two (2) trees and one (1) must be in the front yard, and five (5) shrubs. The time limits contained herein may be extended for good cause, a one time extension of time may be granted to comply with this provision by the Community Development Department Director of the City and the Architectural Control Committee in writing. Yard areas not covered by lawn or other landscaping will be covered with rock (preferably river rock) or bark mulch. Mounding of planting beds and lawn areas will be permitted if graded so as to blend with adjacent property and/or landscaping. Special care shall be taken to insure proper surface drainage to eliminate casual water pockets, so as to not infringe on neighboring property.

In the event any Owner maintains and keeps his yard or home in a condition which violates any of the use restrictions hereinabove set forth, the Board of Directors of the Association shall have the power to contract with an independent third party to remedy the violation. Such right to remedy shall arise after seven (7) days written notice of the nature of the violation is given to the Owner of the Lot, and the Owner has failed to remedy the violation within the seven (7) day period. The cost of correcting the violation shall be paid as a Special Assessment and is enforceable by the Association against the Owner of the Lot in violation. This remedy shall be in addition to other remedies provided herein for enforcement of the provisions of this Declaration.

Section 11.24. Maintenance of Common Area. To the extent not performed by the applicable governmental entity or Owner, the Association shall be responsible for the landscaping and maintenance of the Common Area, including but not limited to repair of signage, fencing, stone columns, irrigation equipment, lighting and electrical fixtures and equipment, and plantings. No Owner shall, in whole or in part, change the landscaping, grade or fencing or in any way change the retaining wall on any portion of the Common Area.

ARTICLE XII. ASSOCIATION WATER

Section 12.1. Management of Association Water. The Association shall have the exclusive authority to allocate, deliver, manage, and control the use of the Association Water. Further, the Association shall have the exclusive authority to own, operate, repair, and maintain the Irrigation Facilities and shall do so in compliance with Subsection 17.15.090(H)(6)(g) of the Fruita Land Use Code. The Association's authority shall include (without limitation) the promulgation of rules, regulations, policies, and procedures, not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand.

Section 12.2. Easements for Ingress and Egress. All Irrigation Facilities shall be owned, operated, and maintained by the Association. Each Owner grants to the Association reasonable ingress and egress over, under, and across all easements shown on the Map or any recorded plat of any portion of the Subdivision for the purpose of operating, repairing, or maintaining Irrigation Facilities. No Owner shall construct, erect, or maintain any improvement or structure which shall interfere with the Association's ownership, operation, and maintenance of Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement which shall interfere with the ownership, operation,

and maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure. Despite anything to the contrary stated

elsewhere in this Article X, Declarant shall have the right to utilize the Irrigation Facilities to provide irrigation water to land added to the Property under Section 15.5; provided that:

- (a) The irrigation water utilized with Irrigation Facilities becomes Association Water when the land is added to the Property, and
- (b) This added use of the Irrigation Facilities does not interfere with delivery of Association Water then being delivered to Lots through the Irrigation Facilities.

Section 12.3. Irrigation Assessments. All billings by Grand Valley Water Users Association associated with Association Water shall be Common Expenses.

Section 12.4. Flow Restriction; Water Availability. The Association has the right to install and maintain flow restrictor valves on the irrigation pipelines delivering irrigation water to each Lot. Declarant, the Association, and each subsequent Owner understand and agree that the general area of the Property is desert-like in nature, that Irrigation Water availability varies and that such water is sometimes not available at all for extended periods and that use of Irrigation Water may be limited by the Association utilizing any reasonable means, including without limitation water schedules, water use plans, together with rules and regulations and other limitations on the availability and the nature, amount and area of Irrigation Water usage upon the Lots, Common Area and Property.

Section 12.5. Maintenance and Water Assessments. The Declarant, its successors and assigns shall maintain the Irrigation Facilities and pay all water assessments on Association Water until transfer to the Association; provided, however, that Declarant shall be reimbursed by the Association for all payments of water assessments paid by Declarant under this Section. Upon the transfer to the Association, the responsibility for the Irrigation Facilities and Association Water shall be borne by the Association.

Section 12.6. Transfer to Association. Prior to the sale of the first Lot by Declarant, Declarant shall convey fee simple title to Irrigation Facilities to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and title exceptions of record on the date of recording this Declaration. Further, prior to transfer to the Association, the Irrigation Facilities shall be constructed, inspected and approved by the City of Fruita Engineer per the Fruita Land Use Code.

Section 12.7. Pressurized Irrigation. The Association shall agree to provide and maintain some form of a pressurized irrigation system.

ARTICLE XIII. INSURANCE

Section 13.1. Insurance. The Association shall obtain and maintain insurance as required by the CCIOA, currently codified at C.R.S. § 38-33.3-313.

Section 13.2. Corporate Employees. If any Owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance in an aggregate amount equal to not less than two

months of current Assessments plus reserve calculated from the then-current budget of the Association.

Section 13.3. Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain fidelity insurance in that same amount and workers compensation insurance unless the Association names such a person as an insured employee in a contract of fidelity insurance described above.

Section 13.4. Additional Coverage. The Association may carry or require of an independent contractor employed to manage the Association fidelity insurance coverage in an amount greater than that specified in this section. In addition, the Association may carry any other insurance, such as directors and officers coverage, unless otherwise prohibited by law.

Section 13.5. Common Expenses. Premiums for insurance required by the Association under this provision are Common Expenses of the Association.

ARTICLE XIV. DAMAGE OR DESTRUCTION OF COMMON AREA.

Section 14.1. Damage or Destruction. In the event of damage or destruction to any improvement installed by the Association within the Common Area due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association may levy a reconstruction assessment in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction, unless:

- (1) the planned community is terminated;
- (2) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (3) eighty percent (80%) of the Owners, including every Owner of a Lot that will not be rebuilt, vote to not rebuild; or
- (4) prior to the conveyance of any Lot to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds;

provided that distributions of insurance proceeds shall be made unless made jointly payable to the Owners and First Mortgagees of their respective Lots, if any. The reconstruction Assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

ARTICLE XV. GENERAL PROVISIONS.

Section 15.1. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions

which shall remain in full force and effect.

Section 15.2. Easements. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved as shown on the recorded Plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no improvement, structure, planting or other material (excluding fences capable of being readily removed for the purposes of the easement and the fences described in Section 11.19.) shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities or facilities, or which may change the direction of flow or drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 15.3. Conflict of Provisions. In case of any conflict between this Declaration, the Articles or Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

Section 15.4. Street Lighting. Unless street lighting and the cost thereof is provided by the community in which jurisdiction this subdivision is situated, all Lots shall be subject to and bound to tariffs or other charges which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado or contracted for by the Association relating to street lighting in this Subdivision, together with rates, rules, regulations and terms therein provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado applicable to such facilities.

Section 15.5. Expansion.

- (a) Reservation of Right to Expand. Declarant reserves the development right to expand the Property to include additional Lots and additional Common Areas at any time or times without approval by the Lot Owners. The area of potential expansion shall be determined by the Declarant and Declarant reserves the right to properly identify the Property to be expanded and the related rights of expansion per CCOIA, Sections 38-33.3-205(1)(h)&(i), C.R.S.
- (b) Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder of Mesa County, Colorado, one or more Supplemental Declarations and Supplement Maps setting forth the Lots and other real property, if any, to be included in the expansion, or a statement that this Declaration shall govern and apply to that property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.
- (c) Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. All conveyances of Lots shall be effective to transfer rights in the Property as expanded. The recordation in the records of Mesa County, Colorado, of supplemental Map(s) or Plat Map(s) incident to any expansion shall operate automatically to grant, transfer, and convey to the Association any new Common Area added to the Property as the result of such expansion.

The allocation for Assessments shall be amended pro rata to reflect the increase in the number of Lots added to the Declaration.

- (d) Declaration Operative to New Lots. The new Lots shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the supplemental parcel Map(s) depicting the expansion Property and Supplemental Declaration(s) of public record in the real estate records of Mesa County, Colorado.
- (e) No Objection to Expansion. No Owner Member of the Association shall have any right of objection to the exercise of the developmental right set forth above including any permitted expansion by Declarant.
- (f) Declarant's rights under this Section 15.5 will expire twenty (20) years after the date of recording of this Declaration in the Mesa County real estate records.

Section 15.6 Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Lots, binding Declarant and all persons and entities claiming by, through, or under him for a period of twenty (20) years from the date of recording in the Mesa County real estate records of the Declaration, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided below.

Section 15.7. Amendment and Termination. Subject to the provisions of Section 38-33.3-217(1), (5) and (6), C.R.S., all or any portion of this Declaration may be supplemented, changed or canceled in whole or in part at any time by the vote or agreement of the Owners of seventy-five percent (75%) of the Lots or by petition to the District Court of Mesa County pursuant to CCOIA, Section 38-33.3-317(7), C.R.S. Such agreement may be in any number of counterparts. Such amendment shall be effective when duly recorded in Mesa County, Colorado real estate records. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles or Bylaws at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 15.8. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under, and across the Common Area and any easements shown on the Map, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property, including without limitation construction of improvements indicated on the Map, provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns, hereby retains a right to store construction materials on Lots owned by Declarant and to make such other use thereof as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations hereunder, and the sale of the Lots. Any special Declarant rights created or reserved under this Article or elsewhere in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the office of the Clerk and Recorder for the County of Mesa. The rights of Declarant reserved in this Section 15.8. shall expire ten (10) years after the recording of this Declaration, except as to

land added to the Property under Section 15.5, as to which those reserved rights will expire ten years after the date of the recording in the Mesa County real estate records of the document adding that land to the Property. Such instrument shall be executed by Declarant and its transferee. Any rights granted to Declarant under this Declaration shall expire on the date which is ten (10) years from the recording date of this Declaration, unless otherwise provided herein.

Section 15.9. Sales Office and Models. Despite anything to the contrary stated elsewhere in this Declaration, the Declarant may maintain a sales and/or management office and model homes on the Property. The office may be located on any Lot owned by Declarant and may be relocated to any other Lot owned by Declarant from time to time, at Declarant's sole discretion. If Declarant ceases to own any Lot, Declarant shall have a period of sixty (60) days in which to remove the office described above from the Property. The Declarant may maintain one or more signs on the Common Area for the purpose of advertising the Property and the sales of Lots. The provisions of this section shall control in the event of any conflict with any other provision contained in this Declaration. Declarant shall have the rights stated in this Section for the same time period as the rights reserved in Section 15.8.

Section 15.10. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.

Section 15.11. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the Mesa County, Colorado real estate records by which that Owner took title and to the street address of that Lot, if any.

Section 15.12. Section Headings. The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

Section 15.13. Severability. Invalidation of all or any part of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

Section 15.14. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of Declarant, each Owner and each and all of their heirs, personal representatives, successors in interest, and assigns.

Section 15.15. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift of dedication of any portion of the Property to the general public or for any public use or purpose.

Section 15.16. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained herein are separate and distinct from any zoning, building or other law ordinance, rule or regulation of the City of Fruita or of any governmental authority having jurisdiction over the Property which now or in the future may contain different requirements from or in addition to those contained herein or which may prohibit uses permitted herein or permit use prohibited herein. In the event of any conflict between the provisions hereof and the provisions of any such law, ordinance, rule or regulations, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then to the extent possible, the Owner must comply with these covenant, conditions and restrictions unless such compliance would

