

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR GEWONT TOWNHOMES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GEWONT TOWNHOMES (the "Declaration") is made the 19th day of August 2019, by Gewont Enterprises, LLC, a Colorado limited liability company, Declarant, representing 68.75% of the Owners in Gewont Townhomes Subdivision.

RECITALS

- A. Declarant recorded in Book 4718, Page 747, Reception #2454930, Mesa County, Colorado records, a Declaration of Covenants, Conditions, Restrictions and Easements of Gewont Townhomes Subdivision (the "Original Declaration").
- B. In Article VIII, Section 5 of the Original Declaration, amendment is authorized upon approval of at least 67% of the Owners of Lots within the Subdivision.
- C. Gewont is the Owner of 11 of 16 Lots in Gewont Townhomes Subdivision, as shown on Gewont Townhomes Subdivision Plat, recorded at Reception No. 2454926, Book 4718 at Page 742 of the Mesa County Clerk and Recorder (the "Plat"), which is incorporated herein by reference, and the Subdivision is further described as follows:

Lot 2 of Moorland Minor Subdivision which was a replat of Mandatory subdivision, a subdivision of Parcel B of a Subdivision of Tract 44 of Orchard Subdivision, now part of the City of Fruita, and Out lot A of the Hussman Minor Subdivision which was a replat of Lot 5 in Downer Subdivision in the NE 1/4 Section 18, T1N, R2W of the Ute Meridian, in the City of Fruita, County of Mesa, State of Colorado.

(the "Property").

THEREFORE, Declarant covenants, agrees and declares that the Property is a planned community that shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the following limitations, restrictions, easements, covenants, conditions, reservations, liens and charges described in this Declaration, 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 be binding upon and inure to the 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 that may be enforced by each Owner, his or her successors and assigns, or by the Association, its successors and assigns. This Declaration supersedes and replaces the Original Declaration in its entirety, which is terminated.

**ARTICLE 1
DEFINITIONS**

Section 1.01. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.02. "Architectural Control Committee" also referred to herein as the "ACC" shall mean and refer to the Architectural Control Committee referred to in this Declaration.

Section 1.03. "Assessment" shall mean and refer to any assessment levied against one or more Owner(s) or Lot(s) as permitted by this Declaration or applicable law, including without limitation any 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, including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.
- (b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his or her 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 or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness or willful misconduct of any Owner or his or her guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a Special Assessment.
- (c) "Capital Assessment" shall mean and refer to a charge against any Lot representing a portion of the Association's cost for the purchase, installation, construction, or expected or unexpected repair or replacement, of any capital improvement (including the necessary fixtures and personal property related to it) that is a Common Expense of the Association, plus reserves for repair or replacement of existing capital items, and acquisition, construction and installation of new capital improvements.

Section 1.04. "Association" shall mean and refer to the Gewont Townhomes Homeowners Association, a nonprofit corporation incorporated under Colorado law.

Section 1.05. "Association Water" shall mean and refer to the GVIC water shares owned by the Association for irrigation purposes, as well as any other water or water rights, ditch or ditch rights, or reservoir or water storage rights, owned or acquired by the Association for use on the Property.

Section 1.06. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.07. "Bylaws" shall mean the Bylaws of the Association as they may be amended from time to time.

Section 1.08. "Common Elements" shall mean any and all real property, improvements, equipment and fixtures owned, leased or controlled by the Association for the common use and enjoyment of the Members, including but not limited to Tract A as depicted on the Plat, all irrigation and drainage easements, and the Irrigation Facilities.

Section 1.09. "Common Expenses" shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.10. "Conveyance" shall mean and refer to transfer of a fee simple title by deed, installment land purchase contract, or otherwise of any part of the Property.

Section 1.11. "County" shall mean and refer to Mesa County, Colorado.

Section 1.12. "Declarant" shall mean and refer to Gewont Enterprises, LLC and its successors and assigns.

Section 1.13. "GVIC" means Grand Valley Irrigation Company.

Section 1.14. "Irrigation Facilities" shall mean and refer to all improvements, equipment, facilities and other personal property owned, operated or maintained by the Association for the purpose of delivering water to the Lots and Common Elements, and shall include, but not be limited to, all pipes, pipelines, 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, but specifically excludes the riser and any other equipment beyond the riser servicing each Lot.

Section 1.15. "Limited Common Elements" means those parts of the Common Elements that are either limited or reserved in this Declaration, on the Plat, or by action of the Association, for the common use of fewer than all Owners.

Section 1.16. "Lot" shall mean and refer to each numbered lot of the Property described on the Plat as recorded and amended. Boundaries of a Lot shall be as shown on the Plat.

Section 1.17. "Member" shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.18. Occupant shall mean any person occupying a Townhome on a Lot within the Subdivision who is not an Owner.

Section 1.19. Out lot A shall mean that Out lot so designated on the Plat. Such out lot shall be owned by the Association and shall include the public access easement designated on the Plat.

Section 1.20. "Owner" shall mean and refer to Declarant and to any other person or entity holding a fee simple ownership interest in any Lot, including contract purchasers and lessees with enforceable options to purchase, 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 1.21. "Plat" means the plat of the Property attached to this Declaration as Exhibit A and the plat of the Property by the name Gewont Townhomes recorded in real property records of the County, as it may be supplemented and amended from time to time. In the event of a discrepancy between the attached plat and the recorded plat, or if the attached plat is illegible, the recorded plat shall control.

Section 1.22. "Party Wall" means the material(s) located on the dividing Lot line between the adjacent, interior walls of adjoining Townhomes and beneath the roof shingles and behind any exterior stucco, stone, masonry or siding materials of a Townhome.

Section 1.23. "Property" shall mean and refer to that certain real property in Mesa County, Colorado described in Recital Paragraph A and as further shown and described on the Plat.

Section 1.24. "Subdivision" shall mean all of the Property and the improvements on it subject to this Declaration or any amendment to this Declaration.

Section 1.25. "Townhome" means a single-family dwelling structure constructed on a Lot with one or more zero lot line setbacks and a common roof and/or one or more Party Walls connecting the structure to one or more similar structures.

ARTICLE 2 **THE ASSOCIATION**

Section 2.01. Membership. Every Owner of one or more Lots in the Subdivision shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article 2. No person or entity other than an Owner of one or more Lots may be a Member. By accepting a deed to a Lot or other conveyance the acceptance of which would render the holder an Owner, 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. No Owner shall be entitled to sever his or her ownership interest in a Lot from membership in the Association, provided, that this shall not be construed as precluding an Owner from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership with any other person or persons.

Section 2.02. Allocation of Votes. Each Lot shall be allocated one vote in the Association. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of such Owners. There is agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If the Owners of the Lot are unable to agree, their vote will not be counted. The Association is entitled to reject a vote or proxy or written ballot if an officer of the Association, acting in good faith, as a reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign on behalf of Owner, and the Association and its officers shall not be held liable for the rejection. 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, including assessments, owed to the Association or is in violation of any of the governing documents of the Association.

Section 2.03. Voting by Proxy. A vote allocated to a Lot may be cast pursuant to a proxy duly executed by Owner. A proxy shall be invalid if obtained through fraud or misrepresentation. In the event a proxy is used for a Lot owned by more than one Owner, agreement between or among the Lot Owners is presumed unless a protest is made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

Section 2.04. Directors and Officers of the Association. The affairs of the Association shall be managed by a Board of Directors consisting of not more than three (3) directors, as more fully provided in the Bylaws. The Officers of the Association are specified in the Bylaws. If less than three (3) Members are willing to serve as Directors, the Board shall consist of that number of members who are willing to serve as Directors.

Section 2.05. Duties and Obligations. The Association shall perform all duties and obligations specified in this Declaration, the Articles of Incorporation and the Bylaws, including but not limited to maintenance and upkeep of the Common Elements, perimeter fencing, and front and backyards (except for those fenced-in portions of back yards) of the Townhomes so that the Common Elements and yards remain attractive and well-kept at all times.

Section 2.06. Authority. The Association shall have all rights, powers and authority specified or permitted by this Declaration, the Articles of Incorporation, the Bylaws, and applicable law, to the extent permitted by law. The Association shall have the authority to adopt such rules and regulations as it deems necessary or convenient for the governance of the Subdivision.

Section 2.07. Annual Budget. The Board of Directors shall cause an operating budget for the Association to be prepared no less frequently than annually, a copy of which shall be provided to the Owners before the annual meeting of the Owners. Unless at the meeting Owners representing a majority of the vote rights reject the budget, the budget is ratified, whether or not a quorum is present. If 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.

Section 2.08. Actions Against Owners. The Board of Directors may suspend a Member's voting rights, use of Association Water, and/or any benefits of membership in the Association for any period during which any Assessment against such Member's Lot remains unpaid and delinquent, and/or while a Member is in violation of this Declaration or any rules or regulations adopted by the Association. The Association may also take judicial action against any Owner to enforce compliance with any provision of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance, and may exercise any other right or remedy for enforcement of this Declaration permitted by law.

ARTICLE 3 COVENANT FOR ASSESSMENTS

Section 3.01. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, including the Declarant, by acceptance of a deed therefor, whether it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, commencing the 1st full month following in which both construction and permanent landscaping have been completed, as deemed so by the Board: (1) annual assessments or charges, (2) special assessments, and (3) capital assessments, such assessments to be established and collected as hereinafter provided. The annual, special and capital assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass from them. The Association's lien on a Lot for assessment 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 land

subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 3.02. Purpose of Assessments; Agreement with Holder of Mortgage. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety or welfare of the residents of the Subdivision; for the benefit of the Common Elements; or for any other purpose of the Association, as those purposes (as amended from time to time) are specified in this Declaration, the Bylaws, or the Articles of Incorporation; or as otherwise permitted by applicable law. The Association may enter an escrow agreement with the holder of an Owner's mortgage so that assessments may be combined with the Owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the Federal Housing Administration, Department of Housing and Urban Development, Veterans' Administration, or another government agency.

Section 3.03. Annual Assessments.

- a. The Board shall set the annual Regular Assessment for the first fiscal year following the period Declarant control at \$900.00.
- b. Effective with commencement of the second and each subsequent Association fiscal year following the period of Declarant control, the Board shall fix the amount of the annual Regular Assessment in the budget to be prepared in accordance with Section 2.06.

Section 3.04. Due Dates. The due date(s) of Assessments shall be established by the Board of Directors. Special Assessments and Capital Assessments may be made by the Board at any time, except as limited by this Declaration.

Section 3.05. Expense Allocation. All assessments shall be allocated equally among the Lots. Such assessments shall be in an amount sufficient to meet the expected needs of the Association. In appropriate circumstances, the Association may make an assessment against any Owner or Owners of any Lot for damage to any Improvement owned by the Association caused by the negligence or willful conduct of any Owner or Owners, his or her agents, employees, guests invitees or tenants, and shall not require prior approval of the members.

Section 3.06. Owner's Negligence. In the event that the need for maintenance, repair, replacement, reconstruction or reconfiguration of any Common Element, or any other Common Expense, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any family or household member, guest or invitee of such Owner, such expense and all related fees, costs and expenses of or to the Association shall be the personal obligation of such Owner and may be made part of any Assessment against such Owner and that Owner's Lot(s).

ARTICLE 4
NONPAYMENT OF ASSESSMENTS

Section 4.01. Delinquency. Any Assessment provided in this Declaration that is not paid when due is delinquent. If any such Assessment is not paid within thirty (30) days after the due date without additional notice or demand, the Assessment shall bear interest from the due date at a rate of 21% per annum. The Association may, at its option, exercise any right or remedy available to the Association under applicable law, including without limitation bringing an action at law against the Owner(s) personally

obligated to pay the same or foreclosing the lien provided in Section 3.01 against the Lot(s) for which the Assessment has not been paid; and in any case there shall be added to the amount of such Assessment interest and all costs that may be incurred by the Association in its collection of the Assessment, including reasonable attorney fees. Each Owner vests in the Association or its assigns the right and power to bring all actions or proceedings at law or in equity or to institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 4.02. Nature of Obligation and Lien. The obligation for payments of Assessments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The Board may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner, and the description of the Lot. Such a notice shall be signed by one member of the Board and may be recorded in the real property records of the County. The recording of this Declaration constitutes record notice and perfection of the lien. No further recording of any claim of lien or assessment is required. The lien for each unpaid Assessment attaches to each Lot at the beginning of each Assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. Each Assessment, together with interest, late charges, costs and reasonable attorney fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment became due.

Section 4.03. Foreclosure Sale. Any foreclosure sale related to an Assessment lien shall 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.

Section 4.04. Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale under it shall be in addition to, and not in substitution of, all other rights and remedies that 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 provided above, all of which rights and remedies shall be cumulative.

ARTICLE 5

CONSTRUCTION, LANDSCAPING, USE REQUIREMENTS, AND RESTRICTIONS

Section 5.01. Maximum Number of Townhomes. The maximum number of Townhomes that the Declarant reserves the right to create in the Subdivision is sixteen (16). The Declarant does not reserve any future development rights relating to the Subdivision.

Section 5.02. Minimum Size of Residences; Garages. The total square feet of a Townhome on any Lot, not including basements, porches, garages and other similar attachments, shall have a minimum size of 1,150 square feet. Every Townhome shall have a minimum of one attached two-car enclosed garage.

Section 5.03. Construction of Townhomes. All Townhomes shall be constructed in conformance with the PUD Guide, as revised September 5, 2017 and recorded at Reception No. 2817805 on October 17, 2017 in conjunction with Ordinance No. 2017-13. Only building plans approved in writing by Declarant or the ACC, once established, shall be utilized to construct all the structures, including Townhomes, within the Subdivision. Care shall be taken by all Owners, builders, designers, and

the Declarant to maintain consistency of design throughout the Subdivision, as set forth in this document and the PUD Guide.

Section 5.04. Landscaping. The Declarant shall complete landscaping on any Lot within six (6) months following the issuance of a Certificate of Occupancy for the Unit and otherwise comply with the landscaping requirements contained in the Fruita Land Use Code. No Owner shall permit anything or condition to exist upon his Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. No cotton-bearing cottonwood trees, fruit bearing Mulberry trees or Bermuda grass shall be planted or maintained on any Lot. No tree, shrub or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or the Plat such as to hinder or interfere with the purposes for which such easement was created. Should the Owner of any Lot fail to comply with landscaping guidelines as set forth herein, the Association may, at its sole discretion, cause such landscaping to be completed and assess the Owner for all costs incurred.

Section 5.05. Residential Use. No Lot may be used for commercial purposes, except for home occupations, without written authorization from the Declarant, or, the Board after the period of Declarant control. For purposes of this Section 5.01, "home occupation" means an occupation conducted in accordance with City of Fruita ordinances for home occupations and which does not entail the employment of third persons in the Subdivision. This does not include the delivery of goods or services to customers upon a Lot, nor to the leasing of any Townhome as described herein. Any other commercial use shall be considered a nuisance. Declarant, however shall not be subject to the provisions of this Section.

Section 5.06. Interior of Townhome and Utilities. Except as may otherwise be provided in this Declaration, an Owner may make any improvement or alteration to the interior of his or her Townhome that does not impair the structural integrity or the mechanical, electrical or any other system of any other Townhome or any Common Elements. No utilities, lines, pipes, wires, conduits or systems running through a Townhome that serve another Townhome may be altered, changed, relocated or disturbed in any way without the prior written consent of the ACC. Any fixture, equipment or utility installed within a Townhome shall be maintained and repaired by the Owner of that Townhome commencing at the point where the fixture, equipment or utility enters the Townhome. No changes or alterations shall be made by any Owner with respect to any of the gas, electrical, water or sewer facilities or equipment without prior written approval by both the Board and the ACC. All utilities shall be buried underground from their primary source adjacent to the Lot line at the Owner's sole expense.

Section 5.07. Exterior of Townhomes. No additions, modifications (including paint), demolition, or any other changes may be made to the exterior of any Townhome by any Owner without written approval by both the adjoining Lot Owner and the ACC. No Lot shall be used for mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 5.08. Care of Common Elements. The Owners shall not cause or permit any damage, deterioration or the accumulation of trash and debris upon the Common Elements. In the event that the need for maintenance or repair of the Common Elements 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 to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be

determined by the Board at a hearing after reasonable notice to the Owner.

Section 5.09. Fences. All Developer installed perimeter fencing shall be owned and maintained by the Association. Owners are specifically restricted from modifying the perimeter fence or any portion thereof. No fences may be constructed, altered, or removed without the prior written approval of the ACC and the City of Fruita. No fences shall be placed in any side yard unless first approved in writing by the ACC. All fencing, including fencing for pets, shall be white vinyl or equal, may not intrude into the easement located at the rear of the Lot, shall not exceed 48" in height. Pet fencing, if approved as described above, shall be constructed in such a manner as to prevent any pet crossing the owner's property line. Privacy fencing around a spa or hot tub, if approved as described above, and/or the cemented patio area shall not exceed six feet (6') in height, may be of white or tan color, and shall be limited to the either the cemented patio or the area of the equipment it is screening.

Section 5.10. Site Lines on Corner Lots. Nothing shall be placed or planted on a corner Lot that obstructs site lines at elevations between two (2) feet and six (6) feet above the top of the street curb within a triangular area formed by the junction of the street and the curb lines and the line connecting them at a point twenty-five (25) feet from the junction of such streets, curb line, or extension thereof.

Section 5.11. Lot and Improvement Maintenance. Each Lot and all improvements on it Townhome shall be properly maintained by the Owner of such Lot at his or her expense with the exception of the yard (both front, side, and back), which will be maintained by the Association unless the backyard or any portion of it is fenced-in. In the event of a fenced-in backyard, or portion of backyard fenced, then the Owner shall maintain the fenced-in area of the yard. Owners shall be responsible for maintaining all landscaping within the fenced-in area of their backyard in a neat, clean, cultivated, attractive, and well-maintained condition, specifically including pet waste. No rubbish, debris or other such accumulations of any kind shall be placed or permitted to accumulate or remain on any Lot. All vegetation shall be properly cultivated (including watering) and neatly trimmed. In the event an Owner fails to maintain his or her Lot in accordance with this Declaration, the Association may hire out such maintenance as is necessary to bring such Lot into compliance with this Declaration and may assess the Owner of such Lot for those costs, as provided in this Declaration. Unless it is an emergency, the Association shall notify the Owner in writing thirty (30) days before such action is taken, stating the failure of the Owner to maintain his or her Lot. The Association shall be responsible for maintaining front, side, and backyards of each Lot including, but not limited to snow removal and weeding on the sidewalks, but not snow removal on individual Unit driveways and walkways. Any damage caused by the Association to the Owner's Property in performing such maintenance shall be paid by the Association. An Owner must notify the Association in writing within thirty (30) days of notice of such damage, or any claim against the Association shall be barred. Thereafter, the Association, through the ACC, may investigate such claim and determine if the damage was caused by the Association or whether a preexisting condition existed which caused the damage before any action was taken by the Association. The ACC shall provide written notice to the Owner of its findings. If the ACC determines that the damage was caused by the Association, the Association shall pay for such damages. If the ACC determines that a preexisting condition caused the damage, the Owner may thereafter file suit against the Association within thirty (30) days after receipt of such notice if the Owner believes that the damage was caused by the Association. The parties shall first mediate the dispute.

Section 5.12. Yard Restrictions. All ornamentation in yards, such as, by way of example but not limitation, figurines, plastic flowers, colored lights, windmills, sculptures, and bird baths or feeders, shall either be screened from public view or approved by the ACC. No clotheslines, dog runs or drying yards shall be located on any Lot so they are visible from a street or another Lot. This Section 5.07 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, which is addressed in Section 5.11.

Section 5.13. Vehicles.

- a. No vehicle other than passenger vehicles licensed for use on Colorado roadways may be parked or stored in one place on a driveway for more than forty-eight (48) hours.
- b. Except temporarily while loading or unloading, no trailer, boat, snowmobile, recreational vehicle, motorcycles, unlicensed automobile, or other motorized vehicle of any kind, may be stored on a driveway or on a Lot without prior written approval by the Board. All such vehicles must be stored in the garage on a Lot or outside of the Subdivision. No vehicle of any nature may be parked or stored on the Common Elements.
- c. No motorized vehicles of any type, other than emergency or maintenance vehicles, are permitted on the Riverfront Trail System.
- d. No inoperable vehicle may be stored anywhere on the Lot other than inside the garage. All repairs and maintenance to vehicles, other than minor tune-ups performed by an Owner on his own vehicle, must be done in the garage on a Lot.
- e. Despite anything to the contrary stated in this Section 5.08, an occupant of a Lot who is a bona fide member of a volunteer fire department or who is employed by a primary provider of emergency firefighting, law enforcement, ambulance or emergency medical services is exempt from the requirements of this Section 5.08 if the vehicle is required to be available at designated periods as a condition of the occupant's employment and the parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants of Lots to use any streets, alleys or driveways.

Section 5.14. Storage. No equipment, materials, garbage cans, bicycles, wood, or other personal property shall be stored anywhere outside of a Townhome except for the garage connected to the Townhome. No accessory buildings, such as storage sheds will be allowed on any Lot. In no event shall an Owner or an occupant of a Townhome store the property of a third-party anywhere on his or her Lot. Rain water may not be discharged from any roof onto any side yard. Upon vacation of a Lot for any reason, all personal property shall be removed from the Lot and the Common Elements.

Section 5.15. Sidewalks. No Owner shall obstruct any sidewalk or pathway at any time (except for loading and unloading).

Section 5.16. Dumpster. No garbage, rubbish, or trash shall accumulate on any Lot or the Common Elements. All garbage, rubbish, and trash shall be placed and kept in containers. If there is a dumpster in the Subdivision, only household trash and waste shall be discarded in the dumpster. No electronics, tires, hazardous materials (as defined in applicable federal, state and local laws), furniture, mattresses, or items that cannot fit entirely in the dumpster shall be discarded in the dumpster. No trash, debris or other discarded items shall be placed around the dumpster or in the dumpster area. The lid on the dumpster is to remain closed at all times.

Section 5.17. Signs and Flags. No sign, graphic, or advertising device of any kind may be displayed on any Lot except: (a) one sign advertising the property for sale or rent; (b) signs used by the

building contractor or lender for advertising during construction; (c) the American flag, displayed in accordance with 4 U.S.C. §§ 4 to 10 and rules and regulations adopted by the Association and not contrary to law; (d) a service flag not to exceed nine (9) inches by sixteen (16) inches, subject to rules and regulations adopted by the Association and not contrary to law; and (e) political signs in support of candidates or ballot issues limited to the period forty-five (45) days immediately preceding the election date and seven (7) days after the election date on which the candidates or issues will be voted upon. Any permitted sign may be no more than five (5) square feet (or smaller if required by applicable law). Signs used by Declarant are not subject to the restrictions in this Section 5.11 or any other restrictions.

Section 5.18. Antennas, Towers and Satellite Dishes. No antenna, satellite dishes, or similar devices for radio, television or other electronic transmission or reception shall be erected, installed or permitted to remain on any Lot, except that television and radio antennas and satellite dishes not in excess of twenty-four (24) inches in height or diameter (as the case may be) attached to a Townhome or other structure on a Lot may project up to three (3) feet from its attachment point, so long as the antenna or dish is not visible from any street or driveway adjoining that Lot.

Section 5.19. Restrictions Relating to Drainage. Nothing shall be done or permitted on any Lot that would block, divert or channelize the natural flow of drainage water across any Lot from adjacent Lots or the Common Elements, as established by the original grading approved by the applicable local government, without specific approval from the ACC and the City of Fruita.

Section 5.20. Animals. No animals shall be allowed on the Property other than domestic pets. No animals or pets of any kind shall be raised, bred or kept on any Lot for commercial purposes. No feral animals, chickens, beehives, livestock, or other farm animals are allowed in the Subdivision. No pet shall exceed thirty (30) pounds in weight, without prior written approval by the Board. Not more than two (2) pets in cumulative total shall be kept on a Lot, and only so long as such pets are not kept for any commercial purpose and are not kept in such manner as to create a danger or nuisance (by excessive noise or otherwise) to any resident of the Subdivision, and are kept in accordance with any applicable laws, rules and regulations. An Owner's right to keep animals shall be coupled with the responsibility to pay any costs to the Association for any damage caused by such Owner's animals to Common Elements. All animals shall be kept on an Owner's Lot or on a leash or other restraint while elsewhere in the Subdivision. Owners and occupants in the Subdivision are responsible for the daily cleanup of all waste from their animals. Habitually barking and/or vicious dogs are prohibited at the sole discretion of the Board. At the request of any Owner, the Board shall determine whether a particular animal shall be considered a domestic pet, whether an animal is a nuisance, or whether the number of animals on a Lot is in compliance with this Section 5.14.

Section 5.21. Leases. The term "lease" as used in this Section 5.15 shall include any agreement for the leasing or rental of a Lot or any portion of a Lot, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his or her Lot under the following conditions:

- (a) All leases shall be in writing, and the Lease shall contain provisions meant to ensure compliance with this Declaration;
- (b) Owner shall provide a copy of this Declaration, along with any amendments, to each lessee, and lessee shall agree to comply with its provisions;
- (b) All leases and the lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation, Bylaws and

rules and regulations of the Association, and the lessee's failure to comply with any of these documents, in any respect, shall be a default under the lease; and

- (c) The term of the lease shall be not fewer than thirty (30) days unless otherwise approved by the Board, which approval may be conditioned or denied in the Board's sole and absolute discretion.

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

Section 5.22. Nuisance and Hazardous Activities. No obnoxious or offensive activity shall be conducted on any Lot, nor shall any activity be permitted that becomes an annoyance or nuisance within the Subdivision. No light shall be permitted from any Lot that is unreasonably bright or causes unreasonable glare when viewed from the street or an adjacent Lot or property. No sound shall be emitted from any Lot that is unreasonably loud or annoying and no odor shall be permitted from any Lot that is noxious or unreasonably offensive to others, as determined by the Board in its reasonable discretion. No activities shall be conducted on the Property or within the improvements constructed on or within the Property that are or might be unreasonably hazardous to any person or property. No firearms, fireworks, explosives, air rifles, BB guns, bows/arrows, crossbows or similar devices shall be discharged on the Property. No hazardous materials (as defined in applicable federal, state and local laws), shall be stored anywhere on the Property. No elevated tanks of any kind are permitted on a Lot. In no event shall activities of Declarant that are reasonably necessary for the development and construction of the Property be considered a nuisance or hazard under this Section 5.16.

Section 5.23. No Re-subdivision of Lots. The re-subdivision of any Lot within the Subdivision is prohibited, except by Declarant.

ARTICLE 6

PARTY WALLS AND EXTERIORS OF TOWNHOMES

Section 6.01. Rights. The Owners of adjoining Townhomes separated by a Party Wall shall each have a perpetual, non-exclusive right to access, inspect, maintain, repair and replace the Party Wall and any portion of the exterior, such as the roof, siding, trim, windows, doors and foundation. This right shall be binding upon and inure to the benefit of the Owners and their respective heirs, successors and assigns. It shall run with the land and is not a personal covenant; provided, however, that assignment by either party of his or her Lot shall not release that party from liability under this Article 6, unless specifically released by the other party in writing.

Section 6.02. Maintenance, Repair and Replacement. Both Owners shall share equally in the cost of maintenance, repair and replacement of their Party Wall, and any portion of the exterior, such as the roof, siding, trim, windows, doors and foundation, unless such maintenance, repair or replacement is caused or necessitated solely by one of the Owners, in which case that Owner shall be solely responsible for the cost of such maintenance, repair or replacement. If any maintenance, repair or replacement is caused or necessitated by the Owners in anything but equal proportion, the Owners shall bear the costs of such maintenance, repair or replacement in proportion to their fault.

Section 6.03. Submittal of Plans. Plans for any maintenance, repair or replacement of a Party Wall or any portion of the exterior, such as the roof, siding, trim, windows, doors and foundation, that may or will disturb the exterior appearance of a Townhome must be submitted to and approved by the ACC prior to such disturbance in accordance with Section 7, below.

Section 6.04. Disputes. If the Owners of adjoining units separated by a Party Wall are unable to agree as to whether the Party Wall or any portion of the exterior, such as the roof, siding, trim, windows, doors and foundation, is in the need of maintenance, repair or replacement, the Owners shall submit their dispute to the ACC who shall decide the matter. The ACC's decision shall be treated as a final decision, binding on both parties. If the ACC recommends maintenance, repair or replacement, the parties shall be obligated to submit plans for such maintenance, repair or replacement in accordance with Section 7.

Section 6.05. Contribution. An Owner's right to contribution from the other Owner shall run with the land and shall pass to such Owner's heirs, successors and assigns.

Section 6.06. Survival. Notwithstanding anything in this Declaration to the contrary, to the extent feasible the terms and conditions of this Article 6 shall survive termination of this Declaration.

ARTICLE 7 ARCHITECTURAL CONTROL COMMITTEE

Section 7.01. ACC Approval. No building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Property (including the Common Elements), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, grading, irrigation systems, fences) be made until plans and specifications showing the nature, kind, shape, height, materials, location, drainage and other similar information have been submitted to and approved in writing by the ACC as being in harmony with external design and location in relation to surrounding structures, topography and other matters specified in this Article 7, except that Declarant and its affiliates and successors shall not be required to obtain ACC approval for any construction on the Property.

Section 7.02. Composition of the ACC. The Board of Directors shall comprise the ACC; provided, however, that so long as Declarant or any affiliate of Declarant owns any Lot in the Subdivision, Declarant shall have the authority to appoint the ACC. The power of the Declarant to "appoint," as provided in this Section 7.02, shall include without limitation the power to: initially constitute the membership of the ACC, appoint member(s) to the ACC upon the occurrence of any vacancy, and for whatever reason to remove any member of the ACC, with or without cause, at any time, and to appoint a successor; and each such appointment may be made for such term(s) of office, subject to the power of removal stated in this Section 7.02, as may be set from time to time in the discretion of the Declarant.

Section 7.03. Procedures. The ACC shall approve or deny all requests for architectural control approval in writing within thirty (30) days after the complete submission of copies of all plans, specifications and other materials that the ACC may require in conjunction with the application. If the ACC fails to approve or deny an application in writing within thirty (30) days after completion of submission of a plan to it, the application will be deemed to have been denied. The ACC shall exercise its reasonable judgment to the end that all construction, additions, improvements, landscaping, and alterations to structures, other improvements and property, within the Property, conform to and harmonize with the existing surroundings, buildings, landscaping and structures. In its review of such plans, specifications and other materials and information, the ACC may require that the applicant(s) pay the ACC a reasonable processing fee for the review and approval process. Such amounts, if any, may be levied as part of the Regular Assessment against the Lot for which the request for ACC approval was made and, as such, shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection thereof, as more fully provided elsewhere in this Declaration. Notwithstanding the foregoing, only the Association shall have the right to materially alter or modify the original fencing, landscaping or

grading installed by Declarant in the Common Elements, provided that the foregoing prohibition shall not prevent the repair and maintenance of the same.

Section 7.04. Vote and Appeal. A majority vote of the ACC is required to approve a request for architectural approval pursuant to this Article 7.

Section 7.05. Records. The ACC shall maintain written records of all applications submitted to it and all actions taken by it, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 7.06. Approval or Consent not a Waiver. The approval or consent of the ACC to any application for architectural approval does not constitute a waiver of any right to withhold or deny approval or consent by the ACC as to any other application submitted for approval or consent under this Article 7.

Section 7.07. Time of Construction. Approved projects must be completed within eight (8) months after issuance of a building permit or within six (6) months after approval by the ACC if no building permit is required. If such work is not completed within the prescribed time, the ACC may, by written notice, rescind its approval and re-submission will be required. The ACC may grant an extension for good cause. This Section 7.07 shall not apply to Declarant.

Section 7.08. Xeriscaping. Neither the Association nor the ACC 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.

Section 7.09. Variances. The ACC may grant reasonable variances or adjustments from any conditions and restrictions imposed by the Declaration, to overcome practical difficulties and prevent unnecessary hardships arising because of the application of the conditions and restrictions contained in the Declaration. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other Property or improvements within the Property and shall not militate against the general intent and purpose hereof.

Section 7.10. No Liability. None of Declarant, the Association, or the ACC or its members shall be liable in damages to anyone submitting plans or specifications for approval under this Declaration arising out of or in connection with any action, failure to act, approval, disapproval or failure to approve or disapprove any matter within its jurisdiction under this Declaration. Any Owner submitting or causing to be submitted any plans or specifications agrees and covenants on behalf of such Owner and such Owner's heirs, successors, legal representatives and assigns that they will not bring any such action or suit at law or in equity against Declarant, the Association, the ACC, or any of the members of those entities. Notwithstanding any other provisions in this Section 7.08, decisions concerning the approval or denial of an Owner's application for architectural or landscaping changes shall not be made arbitrarily or capriciously.

Section 7.11. Rules and Regulations. The ACC may, from time to time in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of Articles 5.

Section 7.12. Review Fee and Address. Any plans and specifications shall be submitted in writing together with a reasonable processing fee determined by the Board. The address of the ACC shall be the principal place of business of the Association or such other place as the ACC may from time to time designate to the Board. 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 ACC shall be kept.

Section 7.13. Inspection. During construction, remodeling, repair or other work on a Lot or in a Townhome requiring ACC approval, any member or agent of the ACC may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect the Townhome or Lot to determine whether the work or improvement complies with the provisions of this Declaration.

Section 7.14. No Waiver. The approval or consent of the ACC to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC as to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

Section 7.15. General Provisions. The members of the ACC shall not be entitled to any compensation for services performed under this Article 7. The powers and duties of the ACC shall cease and terminate upon the termination of this Declaration.

ARTICLE 8

ASSOCIATION WATER

Section 8.01. Association Water. The Association owns six shares of capital stock in the GVIC. All irrigation water to be furnished to the Property shall be furnished by the Association and the Association shall install the sprinkler systems on each Lot for the lawns and landscaping. Due to concerns regarding water conservation and to prevent over-watering, the Association shall control the timing and use of irrigation water as it determines in its sole discretion to the Lots and Common Elements, and it may adopt Policies relating to schedules and rules regarding which days or times irrigation water may be used for any given Lot.

Section 8.02. Association Irrigation Equipment. The water facilities to be owned by the Association shall consist of a system of pipes, pipelines, pumps and electrical connections to provide irrigation water to the Common Elements and all Lots. The irrigation facilities, including any easements in connection therewith, shall be solely owned, operated and maintained by the Association, and the Association shall have an easement across all Common Elements and Lots as reasonably necessary to operate, maintain, and repair its irrigation water facilities.

Section 8.03. Management of Association Water. The Association shall allocate, deliver, manage, and control the use of the Association Water, and shall own, operate, repair, and maintain the Irrigation Facilities.

Section 8.04. Excessive Watering. An Owner shall be responsible for any damage to any other Lot of another caused by Owner's excessive watering.

Section 8.05. Irrigation Assessments. Any billings by any person or entity associated with Association Water shall be a Common Expense.

Section 8.06. Hazardous Drainage. Release of contaminants or hazardous materials, as defined in CERCLA, RCRA, FIFRA, the Toxic Substances Control Act, and any other applicable federal and state environmental laws, into the Property is prohibited.

Section 8.07. Limitations. Neither Declarant nor the Association shall be responsible for availability of or restrictions upon any irrigation water, which is governed and controlled by GVIC.

ARTICLE 9 **INSURANCE**

Section 9.01. Type of Insurance. The Association shall maintain a commercial general liability insurance policy with a minimum limit of \$1,000,000 per each occurrence, and \$2,000,000 general aggregate. The Association, as attorney-in-fact, shall have the authority to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

Section 9.02. Assessment of Members. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent members causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event multiple properties are damaged by a loss, the Association in its reasonable discretion may assess each member a pro rata share of any deductible paid by the Association.

Section 9.03. Waiver of Subrogation. The Association and Owners each waive any and all rights of recovery against the other, their officers, members, agents and employees, occurring on or arising out of the use and occupancy of the Property to the extent such loss or damage is covered or indemnified by proceeds received from insurance carried by the other party, or for which such party is otherwise reimbursed. Each of the parties shall, upon obtaining the insurance required under this Declaration, notify the insurance carrier that the foregoing waiver of subrogation is contained in this covenant, and, to the extent available, shall require the insurance carrier to include an appropriate Waiver of Subrogation Provision in the policy.

Section 9.04. Additional Insurance. The Association may carry any other insurance it considers appropriate to protect the Association or the members, including insurance on property it is not obligated to insure and including errors and omissions insurance for the Board, once a Board is established and consists of Members other than the Declarant.

ARTICLE 10 **DAMAGE OR DESTRUCTION OF COMMON ELEMENTS**

Section 10.01. Appointment of Association as Attorney-in-Fact. This Declaration constitutes each Owner's appointment of the Association as his or her attorney-in-fact to administer repairs, receive and apply insurance funds, and to ensure compliance with this Declaration upon the damage, destruction or obsolescence of any Common Elements or the exterior of any Townhome. Any grantee's acceptance of a Conveyance rendering that person an Owner shall constitute the irrevocable appointment of the Association as the grantee's attorney-in-fact, to act with all the powers described in this Section 10.01.

Section 10.02. Rights of Association as Attorney-in-Fact. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authority, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner that is necessary and appropriate to exercise the powers granted in this Declaration. Repair and reconstruction of Common Elements or the exterior of any Townhome means restoring the same to substantially the same condition in which it existed prior to the damage. The obsolescence of any Common Elements shall be determined by the Association, in its sole and absolute discretion. Except as otherwise provided in this Declaration, any insurance proceeds collected shall be paid to the Association for the purpose of repair, restoration, or replacement.

Section 10.03. Application of Insurance Proceeds. In the event of damage or destruction to the exterior of a Townhome or any improvement installed by the Association within the Common Elements

due to an insured loss, the Association shall apply the insurance proceeds to the reconstruction and repair of the damages. If the insurance proceeds are insufficient, the Association may levy a Capital Assessment in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction, unless:

- (a) The planned community is terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (c) Two-thirds (2/3) of the voting rights vote not to rebuild if the Common Elements are damaged, or all of the Owners vote not to rebuild if the exterior of any Townhome is damaged; or
- (d) 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 Elements rightfully demands all or a substantial part of the insurance proceeds.

Distributions of insurance proceeds shall be made to the Association unless made jointly payable to the Owners and first mortgagees of their respective Lots, if any. The Capital Assessment described in this Section 10.03 shall be a debt of each Owner and a lien on his or her Lot and the improvements on it, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

Section 10.04. No Abatement. Regular Assessments shall not be abated during any period of repair or reconstruction to the exterior of a Townhome or any Common Elements.

ARTICLE 11 GENERAL PROVISIONS

Section 11.01. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose.

Section 11.02. Utility and Irrigation Easements. Easements for the installation and maintenance of utilities and irrigation, detention and other water facilities are reserved as shown on the Plat or any other recorded plat of any portion of the Subdivision. Within these easements no improvement, structure, planting or other material (excluding fences capable of being readily removed for the purposes of the easement) shall be placed or permitted to remain that may damage or interfere with the installation or maintenance of such utilities or facilities, or that may change the direction of flow of drainage channels in the easements. The Association shall have the right (but assumes no obligation) to enter upon the Property to correct any flow of water and to establish or re-establish drainage channels. Neither Declarant or the Association, nor utility companies, GVIC or any person or entity lawfully using any such easement, shall be liable for any damage done by any of them or their assigns, agents or employees to shrubbery, trees, flowers or improvements of an Owner located on any land subject to an easement.

Section 11.03. Limitations upon Liability and Indemnification. Except as provided under Section 7 relating to the liability of the ACC, neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. Regarding the Board's duties relating to the Association's investment of reserve funds, the officers and directors shall act in good faith with the care

an ordinarily prudent person would use in like circumstances in a manner reasonably believed to be in the best interest of the Association. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct. Notwithstanding the duty of the Association to maintain and repair parts of the Property as described herein, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Property or by the conduct of other Owners or persons.

Section 11.03. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Property and Lots for a period of twenty (20) years from the date of recording of this Declaration in the real property records of the County, 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 in Section 11.04.

Section 11.04. Amendment. All or any portion of this Declaration may be supplemented, changed or terminated in whole or in part at any time by the vote or agreement of the Owners holding a minimum of two-thirds (2/3) of the voting rights, provided, that so long as Declarant owns one or more Lots in the Subdivision, Declarant must consent to such supplement, change or termination. Notwithstanding the preceding sentence, Section 2.02 may be amended only upon the unanimous vote or agreement of all of the voting rights. Any agreement to supplement, change or terminate this Declaration may be in any number of counterparts, and shall be effective when duly recorded in the real property records of the County. Declarant reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation or the Bylaws for three (3) years after the recording of this Amended and Restated Declaration for the purposes of correcting spelling, grammar, dates, and typographical and clerical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 11.05. Colorado Common Interest Ownership Act. To the maximum extent permitted by law, the Property shall be specifically exempt from all terms, conditions and provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, as provided in C.R.S. § 38-33.3-116(2).

Section 11.06. Compliance with Law. All Owners shall comply with all federal, state and local laws, rules and regulations applicable to their use and occupancy of the of the Property, including, by way of example and not limitation, the common law and all other laws designed to protect public health or welfare and the environment. Any violation of any such law shall be a breach of this Declaration.

Section 11.07. No Representations or Warranties. Unless otherwise specifically set forth in a writing signed by Declarant, no representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Property, or any improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, taxes or regulation thereof. Neither Declarant or the Association, nor any director, agent or employee of the Association, shall be liable for any action or failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

Section 11.08. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 11.09. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be hand-delivered or 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 real property records of the County by which that Owner took title, and to the street address of that Lot, if any.

Section 11.10. 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. To the extent feasible, any non-complying provision and the remainder of this Declaration shall be reformed to comply with applicable law and to preserve the intent of this Declaration, including the invalidated provision.

Section 11.11. Waiver. The failure of the Association or any Owner to enforce any right under this Declaration upon any occasion shall not be deemed a waiver of such right on any subsequent occasion(s). The waiver, either express or implied, by the Association or any Owner of any of the rights, terms or conditions in this Declaration shall not be deemed as or constitute a waiver of any other rights, terms or conditions in this Declaration. Any waiver, in order to be valid and effective, must be in writing.

Section 11.12. Titles and Headings; Construction. The article and 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. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa; and the masculine gender shall include the feminine and neuter genders, and vice versa.

Section 11.13. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of each Owner, their heirs, personal representatives, successors in interest, and assigns.

Section 11.14. Applicable Law and Attorney Fees. This Declaration and the rights of the parties under it shall be governed by and interpreted in accordance with the laws of the State of Colorado, by a court of competent jurisdiction in Mesa County, Colorado. In the event of a dispute involving or related to any term or condition of this Declaration, the prevailing party shall be entitled to recover its reasonable costs and attorney fees, including post-judgment collection costs, in addition to actual damages.

Section 11.15. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained in this Declaration are separate and distinct from any zoning, building or other law, ordinance, rule or regulation of the County or of any governmental authority having jurisdiction over the Property that now or in the future may contain different requirements from or in addition to those contained in this Declaration or that may prohibit uses permitted in it or permit uses prohibited in it. In the event of any conflict between the provisions of this Declaration and the provisions of any such law, ordinance, rule or regulation, 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 covenants, conditions and restrictions unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance with this Declaration would result in such a violation, the Board shall waive any such covenant, condition or restriction to the extent it results in such a violation, and in connection with

such waiver, the Board may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

DECLARANT:

GEWONT ENTERPRISES, LLC

Jozef Gewont
Jozef Gewont, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF Mesa)

Subscribed and sworn to before me the 19th day of August, 2019, Jozef Gewont, Managing Member of Gewont Enterprises, LLC.

WITNESS my hand and official seal.

My commission expires: 05-17-2020

Jennifer M. Walker
Notary Public

