

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
IRON WHEEL SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR IRON WHEEL SUBDIVISION (“Declaration”) is made the ____ day of _____, 2018, by Bookcliff Orchards, LLC, a Colorado limited liability company.

RECITALS

A. Declarant is the owner of the real property in Mesa County, Colorado, legally described as:

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B. 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.

C. Declarant deems it desirable to set aside a portion of the Property as Common Area for the use of the Owners of Lots within the Property, and to establish a Colorado nonprofit corporation, Iron Wheel Homeowners Association, to which such common area shall be conveyed.

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 Declarant and its successors and assigns, each Owner and his or her successors and assigns, or by the Association and its successors and assigns.

ARTICLE 1
DEFINITIONS

Section 1.01. “ACC” shall mean and refer to the architectural control committee appointed by Declarant or by the Board of Directors, as more fully provided in Article 8.

Section 1.02. “Apartment Building” means a building located on Lot A1 in the westernmost portion of the Subdivision, as depicted on the Plat, containing eight (8) attached residential dwelling units leased by the occupants for residential purposes, and which may include Limited Common Area, and which may be governed by an independent owners association, the membership of which consists of the owners of apartment buildings.

Section 1.03. “Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

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Section 1.04. “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 employees, 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 1.05. “Association” shall mean and refer to Iron Wheel Homeowners Association, a nonprofit corporation incorporated under Colorado law.

Section 1.06. “Association Water” shall mean and refer to the shares of GVIC irrigation water and any other water rights owned or controlled by the Association appurtenant to, associated with, or used in connection with all or any part of the Property.

Section 1.07. “Board” or “Board of Directors” shall mean the Board of Directors of the Association.

Section 1.08. “Bylaws” shall mean the Bylaws of the Association, as they may be amended from time to time.

Section 1.09. “CCIOA” means the Colorado Common Interest Ownership Act, presently codified at C.R.S. §38-33.3-101, *et seq.*, as it may subsequently be amended from time to time.

Section 1.10. “City” means the City of Fruita, Colorado.

Section 1.11. “Common Area” shall mean any and all real property, and the improvements and fixtures on it owned, leased or controlled by the Association for the common use and enjoyment of the Members, including but not limited to all Tracts and any Irrigation Facilities, retention area, detention area, fence, pedestrian path, park, landscaping, and street or lighting fixture owned or controlled by the

Association, as well as signage on any Common Area or for the general benefit of the Subdivision or Owners, whether or not located on the real property owned or leased by the Association. The Common Area shall be as shown on the Plat.

Section 1.12. “Common Expenses” shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.13. “Conveyance” shall mean and refer to the transfer of a fee simple title by deed, installment land purchase contract or otherwise of any part of the Property.

Section 1.14. “County” means Mesa County, Colorado.

Section 1.15. “Declarant” shall mean and refer to Bookcliff Orchards, LLC, a Colorado limited liability company, and 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, CCIOA or other applicable law.

Section 1.16. “GVIC” means Grand Valley Irrigation Company and its successors and assigns.

Section 1.17. “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, connectors, controls, siphons, filters, valves, and related parts and materials located in, under, or upon Common Areas or easements within the Subdivision, or elsewhere outside of the Subdivision. Irrigation Facilities shall not include the “stub out” or “lateral” pipelines which extend beyond the boundary lines of the Common Area, irrigation and maintenance easement, or street, as the case may be, within the Subdivision and into a Lot, or to the riser(s) serving an individual Lot, regardless of where located.

Section 1.18. “Limited Common Area” means Common Area that is 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 1.19. “Lot” shall mean and refer to each numbered lot of the Property depicted on the Plat. Boundaries of a Lot shall be as shown and defined on the Plat.

Section 1.20. “Member” shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.21. “Owner” shall mean and refer any person or entity holding a fee simple ownership interest in any Lot that is a part of the Property, 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 1.22. “Plat” means the plat of the Property attached to this Declaration as Exhibit A pursuant to the requirements of CCIOA and the plat of the Property by the name Iron Wheel Subdivision recorded with the Mesa County Clerk and Recorder, 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 1.23. “Property” shall mean and refer to that certain real property in the County described in Recital Paragraph A and as further shown and described on the Plat, together with such additions, if any, as may subsequently be brought within the jurisdiction of the Association by expansion or amendment of this Declaration.

Section 1.24. “Residence” means the single-family dwelling improvements (including garage, whether attached or detached, but excluding any outbuildings) located on a Lot.

Section 1.25. “Special Declarant Rights” shall mean and refer to the development and other rights expressly reserved for the benefit of Declarant in accordance with the terms and conditions of this Declaration.

Section 1.26. “Subdivision” shall mean all of the Property and the improvements on it subject to this Declaration or any amendment to this Declaration.

Section 1.27. “Supplemental Declaration” means a document recorded by Declarant in the real property records of the County setting forth the Lots, Common Area, and any other real property to be included in any expansion of the Subdivision, as well as any additional covenants, conditions and restrictions affecting such expansion area.

Section 1.28. “Tract” shall mean and refer to each Tract depicted and labeled as such on the Plat. Boundaries of a Tract shall be as shown and defined on the Plat. All Tracts are Common Area.

ARTICLE 2

THE ASSOCIATION

Section 2.01. 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 2. 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 or her 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 2.02. Allocation of Votes. Each Lot and each Lot that may be created shall be allocated one vote in the Association, subject to Section 2.06. For purposes of this Section 2.02, each apartment unit in an Apartment Building shall be considered a single Lot, so that eight (8) votes shall be allocated to each Apartment Building. 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.

Section 2.03. No Cumulative Voting. In the election of directors of the Association, cumulative voting shall not be allowed.

Section 2.04. Membership Appurtenant. By accepting a deed to a Lot or other instrument 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

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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 2.05. Directors of the Association. The affairs of the Association shall be managed initially by a Board of Directors consisting of three (3) directors. When Declarant relinquishes control of the Board to the Owners pursuant to Section 2.06, the Board shall be comprised of not fewer than three (3) directors, with the number of directors specified in the Bylaws.

Section 2.06. Management of the Association.

- (a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (i) twenty (20) years after the date of recording of this Declaration (the period of Declarant's control) in the real property records of the County; (ii) sixty (60) days after Conveyance of seventy-five percent (75%) of the Lots that may be created by the terms of this Declaration to Owners other than Declarant; or, (iii) two (2) years after the most recent Conveyance of a Lot by Declarant in the ordinary course of business, Declarant may appoint and remove all Association officers and all members of the Board of Directors, subject to the limitations stated in this Section 2.06.
- (b) Not later than sixty (60) days after Conveyance of twenty-five percent (25%) of the Lots that may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not fewer than twenty-five percent (25%) of the members, of the Board of Directors must be elected by the Owners of Lots other than Declarant.
- (c) Not later than sixty (60) days after Conveyance of fifty percent (50%) of the Lots that may be created by the terms of this Declaration to Owners other than Declarant, not fewer than one-third (1/3) of the members of the Board of Directors must be elected by Owners other than Declarant.
- (d) Upon the termination of the period of Declarant's control specified in subsection 2.06(a), the Owners shall elect a Board of Directors in accordance with Section 2.05 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's control specified above.
- (e) Notwithstanding anything to the contrary stated elsewhere in this Section 2.06, by a vote of sixty-seven percent (67%) of the voting rights of the Members at any meeting of the Members at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a Board member appointed by Declarant.
- (f) Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control; but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or the Board (as described in a recorded instrument executed by Declarant) be approved by Declarant before they become effective.

- (g) Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in C.R.S. § 38-33.3-303(9).

Section 2.07. Quorum. Quorum requirements are specified in the Bylaws.

Section 2.08. Officers of the Association. The officers of the Association are specified in the Bylaws.

Section 2.09. Authority. The Association shall have all rights, powers and authority specified or permitted by this Declaration, the Articles of Incorporation, the Bylaws, CCIOA or any other applicable law, to the extent permitted by law.

Section 2.10. 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 all Common Area. Further, to promote responsible governance, the Association shall adopt a procedure for the adoption and amendment of policies, procedures and rules, as well as regulations concerning the investment of reserve funds.

Section 2.11. Actions Against Owners. The Association may 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, as further provided in Article 12.

Section 2.12. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate or convey all or any part of any Common Area, the Association Water, or any other Association asset. However, no such encumbrance, dedication or conveyance shall be effective unless an instrument signed by Members representing at least sixty-seven percent (67%) of the voting rights of the Members agreeing to such encumbrance, dedication, or transfer has been recorded in the real property records of the County. Any of the instruments required by this Section 2.12 may be signed in counterparts that shall together constitute a single agreement.

Section 2.13. 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 to it, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.
- (b) Any contracts, licenses or leases entered into by the Association while Declarant controls the Association shall provide for termination by either party to it, with or without cause and without payment of a termination fee, at any time after termination of Declarant's control of the Association, upon thirty (30) days prior written notice.

Section 2.14. Public Disclosures After Declarant's Control. Within ninety (90) days after assuming control from Declarant pursuant to Section 2.06, the Association shall make the following

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information available to Owners by posting on an internet web page (if the Owners have been previously notified of the web address via mail or e-mail), maintaining a literature table or binder at the Association's principal place of business, or by mail or personal delivery:

- (a) The name of the Association;
- (b) The name of the Association's designated agent or management company, if any;
- (c) A valid physical address and telephone number for both the Association and the designated agent or management company, if any;
- (d) The name of the common interest community;
- (e) The initial date of recording of the Declaration;
- (f) The reception number or book and page for the main document that constitutes the Declaration;
- (g) The date on which the Association's fiscal year commences;
- (h) The Association's operating budget for the current fiscal year;
- (i) A list, by type of Lot or unit, of the Association's current Assessments, including both Regular and Special Assessments;
- (j) The Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (k) The results of the Association's most recent available financial audit or review;
- (l) A list of all Association insurance policies, including but not limited to property, general liability, director and officer professional liability, and fidelity, which shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed;
- (m) The Articles of Incorporation, Bylaws and any rules and regulations of the Association;
- (n) The minutes of the Board and Member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (o) Any rules, regulations and procedures concerning the investment of reserve funds, the adoption and amendment of policies, procedures and rules, and the resolution of disputes between the Association and Owners.

Section 2.15. Annual Public Disclosures. Within ninety (90) days after the end of each fiscal year of the Association, the Association shall make available (by the same methods described in Section 2.14) the information described in subsections 2.14(g) through 2.14(o).

Section 2.16. Owner Education. So long as required by law, the Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and the Board of Directors, under Colorado law. The criteria for compliance with this Section 2.16 shall be determined by the Board.

ARTICLE 3
PROPERTY RIGHTS IN THE LOTS AND COMMON AREA; MAINTENANCE

Section 3.01. Title to the Common Area. When required by law, but no later than sixty (60) days after initial sale of the last Lot that may be created by this Declaration, Declarant shall convey fee simple title to the Common Area 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 3.02. Members' Easements 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 in accordance with Section 2.12 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, Common Area use, and/or any benefits of membership in the Association, including the use of Association Water, for any period during which any Assessment against such Member's Lot(s) remains unpaid and delinquent, and/or while a Member is in violation of this Declaration or any rules or regulations adopted by the Association; provided that any suspension of such voting rights, Common Area use, or benefits of membership in the Association, except for failure to pay Assessments, shall be made only by the Board or a duly appointed committee of the Board after notice and hearing given at a special meeting of the Board 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 representing at least sixty-seven percent (67%) of the voting rights of the Members 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 sixty (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 unreasonably interfere with the use and enjoyment of any Lot upon which a Residence has been constructed, unless authorized by the Owner; and

- (f) The right of the Association to close or limit the use of the Common Area while maintaining, repairing or making replacements in the Common Area.

Section 3.03. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Common Area and Association Water to his or her family members, licensees and invitees, or tenants or contract purchasers who are in possession of such Member's Lot.

Section 3.04. Waiver of Use. No Member may exempt himself or herself from personal liability for Assessments duly levied by the Association, or release the Lot(s) owned by such Member from the liens and charges created by CCIOA or this Declaration, by waiver of the use and enjoyment of the Common Area or the facilities on it, or by abandonment of his or her Lot.

Section 3.05. General Restrictions.

- (a) All Owners of Lot(s), by their acceptance of their respective deeds or other instruments causing them to become Owners, covenant and agree that the Common Area shall remain undivided, and no Owner shall bring any action for partition (which right is expressly waived), it being agreed that this restriction is necessary to preserve the rights of Owners with respect to the operation and management of the Property.
- (b) No Owner shall engage in any activity that 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) upon the Common Area.

Section 3.06. Maintenance of Common Area. Declarant and its successors and assigns shall maintain all Common Area until transfer to the Association, after which the Association shall maintain all Common Area. Any landscaping and fencing on Common Area shall be maintained in accordance with any applicable standards of the City.

ARTICLE 4
COVENANT FOR ASSESSMENTS

Section 4.01. Creation of the Lien and Personal Obligation of Assessments.

- (a) The undersigned Declarant, for each Lot within the Property, covenants (and each Owner of any Lot by acceptance of a deed or other conveyance for that Lot, whether or not it shall be so expressed in that instrument, 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, attorney fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by C.R.S. § 38-33.3-316(1) or any other provision of CCIOA or by any other applicable law. The Association shall have the right, independent of CCIOA, to impose reasonable charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and

other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, or the rules and regulations of the Association.

- (b) Any charge set forth in this Section 4.01, from the time such charge becomes 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 assessed. 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 or Assessment installment is at least thirty (30) days overdue. Each such charge, together with interest, costs, and reasonable attorney 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-interest unless expressly assumed by them.
- (c) The Association's lien on a Lot for Assessments shall be superior to any homestead exemption now or later provided by the laws of the State of Colorado or any exemption now or later provided by the laws of the United States. The acceptance of a deed or other conveyance 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 4.02. 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 of the Property; for the benefit of the Common Area or Association Water; 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 authorized or permitted by CCIOA or other applicable law.

Section 4.03. Initial Administrative Contribution. The Board shall have the authority to charge each Owner that purchases a Lot (whether from Declarant or any subsequent Owner) a one-time, non-refundable payment to the Association in an amount determined by the Board that shall be used by the Association to cover administrative costs related to the change in ownership and other Common Expenses. This payment shall be collected and transferred to the Association at the time of closing of each sale of a Lot, and shall not relieve an Owner from making regular payments of Assessments when due.

Section 4.04. Initial Assessment. The initial Regular Assessment for each Lot shall be determined by Declarant, subject to Section 4.05. When Declarant relinquishes control of the Board to the Owners pursuant to Section 2.06, the Board shall determine the amount of the Regular Assessments based on a budget adopted by the Association as described in this Declaration, subject to Section 4.05. Until the Board of Directors makes the initial Assessment, all expenses of the Association shall be paid by Declarant.

Section 4.05. Limitations on Assessments. All Regular Assessments shall be subject to the following limitations:

- (a) Until otherwise established in accordance with CCIOA, the Regular Assessment for any Lot on which there is a Residence, or for which a building permit for the construction of a Residence has been issued or on which construction of a Residence has commenced, not including a fence permit (an “improved Lot” in this Section 4.05), shall be determined by the Board in accordance with Section 4.06.
- (b) Any Lot that is not an improved Lot is an “unimproved Lot” for purposes of this Section 4.05. For any unimproved Lot, the Regular Assessment shall be fifty percent (50%) of the Regular Assessment for an improved Lot for that year, provided that the Regular Assessment for an unimproved Lot shall never be less than \$50.00.
- (c) The Regular Assessment for unimproved Lots for which a building permit for a Residence has been issued, or construction of a Residence has commenced, whichever is earlier, shall be increased to the amount for improved Lots effective one year after such building permit has been issued or construction has commenced, whichever is earlier, but shall be prorated based on the month of the year in which the permit was issued or the construction commenced.

Section 4.06. Date of Commencement of Assessments; Due Dates. The initial Regular Assessment shall be prorated based on 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 Assessment against each Lot, subject to Section 4.05, 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 Assessments may be made by the Board at any time, except as limited by this Declaration, CCIOA or other applicable law.

Section 4.07. Expense Allocation. Except as otherwise stated in this Article 4, 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 platted Lots then in the Subdivision. For purposes of this Section 4.07, each apartment unit in the Apartment Buildings shall be considered a single Lot. Despite anything to the contrary stated in this Section 4.07, if permitted or required by this Declaration (see for example Section 4.08), CCIOA or other applicable law, any Common Expense or portion of any Common Expense or other cost or expense to the Association 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 4.08. Owner’s Negligence. In the event that the need for maintenance, repair, replacement, reconstruction or reconfiguration of Common Area, 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). Negligence or the willful act or omission of any Owner or any family or household member, guest or invitee of such Owner, and the amount of the Owner’s liability therefor, shall be determined by the Board of Directors at an informal hearing after notice to the Owner, provided that any such determination that assigns liability to

an Owner pursuant to the terms of this Section 4.08 may be disputed by such Owner in accordance with Article 12.

Section 4.09. Priority of Lien. The lien for Assessments, which includes without limitation all those items specified in Section 4.01, shall have the priority specified in CCIOA, C.R.S. § 38-33.3-316(2), or other applicable law.

ARTICLE 5

BUDGET AND RECORDS

Section 5.01. Books and Records. Association policies and regulations regarding records, retention of records, and Member access to records are specified in the Bylaws.

Section 5.02. Annual Budget. The Board of Directors shall cause an operating budget, balance sheet, and cash flow statement for the Association to be prepared no less frequently than annually.

Section 5.03. 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 which shall be within a reasonable time after mailing or other delivery of the summary.

Section 5.04. Ratification of Budget. Unless at the meeting Members representing at a majority of the voting rights of the Members vote against the budget, the budget is ratified, whether or not a quorum is present.

Section 5.05. Rejection of Budget. In the event the proposed budget is not adopted, the budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 5.06. Reserve Fund. As part of each annual budget, the Board of Directors may include an amount that, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the repair or replacement 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. Any reserve funds may be deposited in such interest-bearing account(s) as the Board of Directors deems appropriate.

Section 5.07. Audit and Review. Upon the request of at least one-third of the Owners, the books and records of the Association shall be subject to a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant (except in the case of an audit), but shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

Section 5.08. Fiscal Year. The fiscal year of the Association shall initially be the calendar year, but the Association may adopt a different fiscal year, for Assessments or otherwise, if permitted by law.

ARTICLE 6

NONPAYMENT OF ASSESSMENTS

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Section 6.01. 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 not to exceed the maximum rate of interest permitted by CCIOA or other applicable law, as determined by the Board. In the Board's discretion, a late fee not to exceed ten percent (10%) of the past due Assessment may be added to the past due amount each month the past due Assessment remains unpaid, beginning thirty (30) days after the original due date. 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 personally obligated to pay the same or foreclosing the lien provided in Section 4.01 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 6.02. Nature of Obligation and Lien.

- (a) 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 or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness and the name of the Owner of the Lot and description of the Lot. Such a notice shall be signed by one member of the Board or by the managing agent of the Association and may be recorded in the real property records of the County. 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. The personal obligation for delinquent Assessments shall not pass by Conveyance of a Lot.
- (b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration; and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association that would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under Section 4.01 of an action or a non-judicial foreclosure either to enforce or to extinguish the lien.
- (c) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recording of any claim of lien or Assessment is

required; however, a notice of lien may be recorded at the Association's option, in which event costs and attorney fees incurred in connection with the preparation and filing of such notice shall be assessed against the Owner's Lot as a default Assessment.

Section 6.03. Foreclosure Sale. Any 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 the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same in the name of the Association.

Section 6.04. Curing of Default. Upon the timely curing of any Assessment delinquency, the Association is authorized to file or record a certificate setting forth the satisfaction of such claim and release of such lien upon payment by the defaulting Owner of a fee determined by the Association to cover the costs of preparing and filing or recording such release, and other expenses incurred.

Section 6.05. 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 7

CONSTRUCTION AND DESIGN GUIDELINES; USE RESTRICTIONS

Section 7.01. Lot Use and Residences. No building shall be erected, or otherwise altered, placed or permitted to remain on any Lot other than one detached, single-family Residence and one garage (whether attached or detached) with a minimum of two (2) and a maximum of three (3) automobile bays. The erection of more than one Residence per Lot is prohibited.

Section 7.02. Building Location. The ACC must approve the location of any building upon a Lot before any excavation may begin. No building shall be located on any Lot nearer to the front lot line, rear lot line, or interior lot line than permitted by applicable codes, ordinances or governmental conditions of approval for the Subdivision. Eaves, steps and uncovered porches shall not be considered a part of the building; provided, however, that this provision shall not be construed to permit any portion of the building on a Lot to encroach onto another Lot.

Section 7.03. New Construction and Temporary Structures. All construction within the Subdivision shall be new construction. No trailer, basement, tent, shack, garage, barn, outbuilding, or temporary structure shall be used as a Residence on any Lot.

Section 7.04. Prefabricated Structures. All Residences, secondary dwelling units, garages and outbuildings constructed on the Property shall be of high quality design, construction, workmanship, and materials; in particular, no structure may be of a type known as, "modular," "manufactured," or "mobile home," regardless of its quality. This Section 7.04 shall not apply to the temporary sales and construction office used by Declarant during the development, construction and sale of Lots in the Subdivision.

Section 7.05. Dwelling Size and Quality. Unless otherwise approved by the ACC, no Residence shall be permitted on any Lot if the heated floor area of the Residence, exclusive of garages,

basements, and open porches, is fewer than 1,200 square feet or greater than 2,500 square feet by outside measurement.

Section 7.06. Building Plans, Materials and Colors.

- (a) All plans, specifications, color selections, and samples of exterior siding and/or masonry materials, along with roof material samples, for any Residence, building, addition or improvement must be submitted to the ACC for review and approval.
- (b) For all Residences: (i) exterior color selections shall blend into the surrounding landscape and terrain; (ii) bright or highly visible colors will not be allowed; and (iii) natural colors will be encouraged.
- (c) Notwithstanding the restrictions in Section 8.06, the ACC may grant a variance for any provision in this Section 7.06 for any reason.

Section 7.07. Landscaping.

- (a) All front yard landscaping and any other landscaping visible from any street shall compliment the residential character of the Subdivision. The landscaping plan must be submitted to the ACC for approval within six (6) months after issuance of the building permit for the Residence, or thirty (30) days before landscaping is to be installed, whichever is first. Landscaping shall be completed and ready for a walkthrough inspection by the ACC within one year after the issuance of a certificate of occupancy for the Residence. This Section 7.07 applies only to those areas of landscaping that are in the front and side yards, and to back yards that are visible from any street. In the event that weather will not permit the planting of plants, shrubs, and grass within the time frames stated above, the ACC may grant an extension of thirty (30) days after the planting season begins in the spring to complete required landscaping. Any significant changes to existing landscaping and/or individual irrigation systems shall be approved by the ACC.
- (b) Each Owner shall be required to plant one tree within the front yard setback area of their Lot as part of the landscaping of their Lot. These trees must have a trunk a minimum of two (2) inches in diameter one foot above ground and be of a type from an approved list of trees supplied by the ACC or approved individually by the ACC.
- (c) Irrigation systems installed on individual Lots shall be approved by the ACC prior to installation.

Section 7.08. Driveways. Driveways shall be concrete unless otherwise approved by the ACC.

Section 7.09. Air Conditioning/HVAC Units. No window mounted air conditioning or HVAC (refrigeration, evaporative or other) units are allowed. All HVAC and air conditioning units shall be ground mounted on a concrete pad, unless otherwise approved by the ACC.

Section 7.10. Vehicle Parking, Storage and Repair.

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- (a) Any unlicensed automobile, or any trailer, boat, snowmobile, recreational vehicle or other motorized vehicle other than passenger vehicles licensed for use on Colorado roadways (collectively, “vehicles” in this Section 7.10), may only be parked in the driveway on a Lot temporarily while loading or unloading. No vehicle other than passenger vehicles licensed for use on Colorado roadways shall be parked or stored in one place on a driveway or within the front setback area on a Lot for more than seventy-two (72) hours. If any vehicle, including passenger vehicles licensed for use on Colorado roadways, is parked or stored in the side yard or rear yard of a Residence it shall be screened by a fence, landscaping or other improvement at least six (6) feet in height approved by the ACC, and not farther forward than the front building corners of such Residence. At no time shall an inoperable vehicle, or a registered vehicle for which the registration has expired, be parked within the area forward of the front building corners of a Residence facing any street without the express written approval of the Board.

- (b) Despite anything to the contrary stated in this Section 7.10, 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 7.10 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 7.11. Restrictions on Storage Areas. Equipment, garbage cans, service yards, wood piles, and storage areas shall be adequately screened by plantings or improvements approved by the ACC to conceal the same from view from neighboring Lots and streets.

Section 7.12. Yards. No rubbish, debris or other such accumulations of any kind shall be placed or permitted to accumulate or remain on any Lot. 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. This Section 7.12 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 7.13.

Section 7.13. Signs and Flags. No sign, graphic, or advertising device of any kind shall 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 7.13 or any other restrictions.

Section 7.14. Fences, Planters and Hedges. All fences must be approved by the ACC prior to construction. No wall, fence, planter or hedge in excess of two and one-half (2½) feet above ground level shall be allowed within any front yard setback area. Open-type fencing will be required for any front yard fencing within the front yard setback area. Front yard setbacks shall be defined according to applicable City ordinances for front yard setbacks. No fence on any Lot may be greater than six (6) feet in height without the approval of the ACC. The ACC may, from time to time, adopt written fencing standards, details and colors which shall be provided to each Owner upon request.

Section 7.15. 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 7.16. 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, as established by the original grading approved by the applicable local government, without specific approval from the ACC.

Section 7.17. Animals. No animal may be kept on a Lot that is a nuisance to other Owners or that runs at large or endangers residents in the Subdivision. All animals shall be maintained on the Owner's property or on a leash. At the request of any Owner, the Board of Directors shall determine whether a particular animal shall be considered a nuisance, or whether the number of any such animals on any Lot is a nuisance. Habitually barking and/or vicious dogs are prohibited at the reasonable discretion of the Board. The breeding, boarding and/or sales of animals are prohibited in the Subdivision.

Section 7.18. Residential Use. No Lot may be used for commercial purposes, except for home occupations. For purposes of this Section 7.18, "home occupation" means an occupation conducted in accordance with City (or any other applicable local government with jurisdiction) ordinances for home occupation and which does not entail the employment of third persons on the premises. This does not include the delivery of goods or services to customers upon a Lot, nor to the leasing of any Lot as described in Section 7.19. Any other commercial use shall be considered a nuisance within the meaning of Section 7.20. Declarant shall not be subject to the provisions of this Section 7.18.

Section 7.19. Leases. The term "lease" as used in this Section 7.19 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;
- (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, but shall also be deemed to be implied terms of each such lease, whether or not actually contained in the lease.

Section 7.20. 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, explosives, air rifles, BB guns, bows/arrows, crossbows or similar devices shall be discharged on the Property. 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 7.20.

Section 7.21. Lot Maintenance. Each Lot and all of the improvements on it shall be properly maintained by the Owner of such Lot. In the event any Owner fails to maintain his or her Lot(s) in accordance with this Declaration, the Association may hire out such maintenance as is necessary to bring such Lot(s) into compliance with this Declaration, and may assess the Owner of such Lot(s) for those costs, as provided in this Declaration.

Section 7.22. Utilities and Easements. Underground electrical, natural gas, and water shall be available to all Lots. The utility companies furnishing these services shall have the easements shown on the Plat. No permanent structure shall be erected on any such easement. Neither Declarant nor the utility company or any entity using these easements shall be held 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. No overhead services shall be allowed to service any Lot.

Section 7.23. Temporary Sales and Construction Office. A temporary sales and construction office maintained by Declarant may be located within the Subdivision during the development, construction and/or sale of Lots and the Property on any Lot owned by Declarant, an affiliate of Declarant, or any successor declarant. Temporary parking in front of and adjacent to the office shall be allowed as long as the office is maintained in the Subdivision. Temporary sales signs, flags, etc. may be placed in the Subdivision during the development, construction and sale of Lots as long as the office is maintained in the Subdivision or there are development, construction or sales activities taking place. During the period of development, construction and sales, Declarant may also designate certain Lots to be used for sales offices, construction offices, storage yards and buildings.

Section 7.24. No Re-subdivision of Lots. The re-subdivision of any Lot within the Subdivision is prohibited, except by Declarant.

Section 7.25. Apartment Building Exemption. The Apartment Buildings shall not be subject to Sections 7.01, 7.05, 7.07, 7.09 and 7.10. Comparable restrictions regarding the Apartment Buildings may be set forth in a Supplemental Declaration governing the construction and design guidelines of the Apartment Buildings.

ARTICLE 8

ARCHITECTURAL CONTROL COMMITTEE

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Section 8.01. ACC Approval. No building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Property (including the Common Area), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, grading, irrigation systems, fences, trash receptacles) 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 8, except that Declarant and its affiliates and successors shall not be required to obtain ACC approval so long as they comply with the construction and design guidelines in Article 7.

Section 8.02. Composition of the ACC. The ACC shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that so long as Declarant or any affiliate of Declarant owns any Lot in the Subdivision, Declarant shall appoint the ACC. The power of the Declarant to “appoint,” as provided in this Section 8.02, 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 8.02, as may be set from time to time in the discretion of the Declarant. Declarant may voluntarily surrender the right to appoint and remove members of the ACC before termination of the period of Declarant’s control; but in that event Declarant may require, for the duration of the period of Declarant’s control, that specified actions of the ACC be approved by Declarant before they become effective.

Section 8.03. Procedures. The ACC shall approve or deny all requests for architectural control approval 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 approved if it otherwise complies with the construction and design guidelines in Article 7. 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, Residences, 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 within any Common Area, provided that the foregoing prohibition shall not prevent the repair and maintenance of the same.

Section 8.04. Vote and Appeal. A majority vote of the ACC is required to approve a request for architectural approval pursuant to this Article 8.

Section 8.05. 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 8.06. Variance. The ACC may grant reasonable variances or adjustments from any condition or restriction imposed by Article 7 in order to overcome practical difficulties or prevent

unnecessary hardships arising by reason of the application of the conditions and restrictions in Article 7. Variances or adjustments shall be granted only if they will not be materially detrimental or injurious to other Lots or the Subdivision or the general intent and purpose of this Declaration. The grant or denial of a variance request shall not affect in any way any of the terms or provisions of this Declaration covered by the variance and shall not serve as a basis for subsequent variances with respect to any other request. The grant of any variance shall not affect in any way the Association's or Owner's obligation to comply with applicable City codes and other governmental laws or regulations.

Section 8.07. Approval or Consent not a 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 other application submitted for approval or consent under this Article 8.

Section 8.08. 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 8.08 shall not apply to Declarant.

Section 8.09. 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 8.09, decisions concerning the approval or denial of an Owner's application for architectural or landscaping changes shall not be made arbitrarily or capriciously.

Section 8.10. Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained in this Declaration, after the expiration of six (6) months from the date of completion of construction of any improvements within the Property, such improvements shall, relative to purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all the provisions in this Article 8, unless written notice of such noncompliance and noncompletion, executed by the ACC or its designated representatives, shall appear of record in the real property records of the County, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 8.11. 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 Article 7.

Section 8.12. Appointment and Designation. The Board may, from time to time, by the vote or written consent of a majority of its members, delegate some or all of the rights or responsibilities of the ACC under this Declaration to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the ACC in all matters delegated.

Section 8.13. 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 8.14. Inspection. During initial construction, remodeling, repair or other work on a Lot or to a Residence 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 any Residence or Lot to determine whether the Residence or any improvement on the Lot complies with the provisions of this Declaration.

Section 8.15. General Provisions. Except for duly licensed architects or other qualified persons delegated authority under Section 8.12, the members of the ACC shall not be entitled to any compensation for services performed under this Article 8. The powers and duties of the ACC shall cease and terminate upon the termination of this Declaration.

ARTICLE 9

ASSOCIATION WATER

Section 9.01. Management of Association Water. To the extent permitted by law, the Association shall have the exclusive authority to allocate, deliver, manage and control the use of Association Water, and shall own, operate, repair and maintain the Irrigation Facilities, as well as all drainage facilities and retention and detention areas. 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. If an Owner violates any provision of this Declaration or any rule or regulation promulgated under it related to Association Water or the Irrigation Facilities, the Association may restrict or terminate the delivery of Association Water to such Owner's Lot, in addition to any other rights the Association may have under this Declaration or at law. The Association also may restrict or terminate the delivery of Association Water to an Owner's Lot in the event of any emergency involving Association Water or the Irrigation Facilities.

Section 9.02. Easements for Ingress and Egress. Each Owner grants to the Association reasonable ingress and egress over, under and across all easements shown on the Plat for the purpose of operating, repairing or maintaining the Irrigation Facilities. No Owner shall construct, erect or maintain any improvement or structure that shall interfere with the Association's ownership, operation, maintenance or repair of the Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement that interferes with the ownership, operation or maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure.

Section 9.03. Irrigation Assessments. Any billings by any person or entity associated with Association Water shall be a Common Expense.

Section 9.04. Hazardous Drainage. Release of contaminants or hazardous materials, as defined in CERCLA, RCRA, FIFRA, the Toxic Substances Control Act, the Clean Water Act, or any other applicable federal or state environmental law, into the Property is prohibited.

Section 9.05. Maintenance and Water Assessments. Until transfer to the Association, Declarant and its successors and assigns shall pay all water assessments on Association Water and maintain the Irrigation Facilities and any ditch lateral serving the Property required to be maintained by GVIC. Upon

transfer to the Association, full responsibility for the Irrigation Facilities, ditch laterals and Association Water shall be borne by the Association.

Section 9.06. Transfer to Association; Limitations. Not later than six (6) months after completion of the Irrigation Facilities (unless an earlier date is required by this Declaration), Declarant shall convey fee simple title in the 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. The Association Water consists of certain rights associated with GVIC, in whose service area the Property is located, and Declarant is not responsible for availability of or restrictions upon Association Water, which is governed and controlled by GVIC.

ARTICLE 10 **INSURANCE**

Section 10.01. General. The Association shall obtain and maintain insurance as required by CCIOA and this Declaration.

Section 10.02. Type of Insurance. The Association shall obtain property insurance insuring against damage to the Common Area for broad form covered causes of loss in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. The Association shall also obtain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area, in an amount deemed sufficient in the judgment of the Board of Directors, insuring the Board, the Association, any management agent, and their respective employees, agents and all persons acting as agents. In addition, if reasonably available, the Association shall maintain director and officer liability insurance. The Association, as attorney-in-fact, shall have the authority conferred upon it in Article 11 to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

Section 10.03. Assessment of Members. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that multiple properties are damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

Section 10.04. Waiver of Subrogation. The Association and the Owners each waive any and all rights of recovery against the other and 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.

Section 10.05. Fidelity Insurance. 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 (2) months of current Assessments, plus reserve calculated from the then-current budget of the Association.

Section 10.06. Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain a fidelity bond in

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the same amount required in Section 10.05, unless the Association names such a person as an insured employee in a contract of fidelity insurance described in Section 10.05. The Association may carry or require of an independent contractor employed to manage the Association fidelity bond coverage in an amount greater than that specified in this Section 10.06.

Section 10.07. Fidelity Bond Premiums. Premiums for bonds required of the Association under this provision are Common Expenses.

Section 10.08. 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.

ARTICLE 11

DAMAGE OR DESTRUCTION OF COMMON AREA

Section 11.01. 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 the Common Area. Any grantee's acceptance of a deed or other 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 as provided in this Section 11.01.

Section 11.02. 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 the Common Area means restoring the same to substantially the same condition in which it existed prior to the damage. The obsolescence of any Common Area shall be determined by the Board, 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 11.03. Application of Insurance Proceeds. In the event of damage or destruction to any improvement installed by the Association within the Common Area due to an insured loss, the Association shall apply the insurance proceeds to the reconstruction and repair of the damaged improvement. 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) Members entitled to cast sixty-seven percent (67%) of voting rights of the Members vote not to rebuild; 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 Area 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 11.03 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.

ARTICLE 12

DISPUTE RESOLUTION

Section 12.01. General. Except for collection and lien foreclosure actions against Owners, specifically including but not limited to actions under Article 4, all actions, disputes or claims between any Owner, the ACC, the Association, Declarant, and their respective agents, contractors, successors and assigns, whether in contract, tort or otherwise, shall be resolved by the procedures set forth in this Article 12, or as set forth in any applicable limited warranty or any applicable agreement between Declarant and any Owner or his or her heirs, successors or assigns.

Section 12.02. Initial Notification; Negotiation. For each claim governed by this Article 12 (a "Claim" in this Article 12), the claimant ("Claimant" in this Article 12) shall give notice to the other party or parties against whom the claim is asserted ("Respondent" in this Article 12), setting forth: (a) the nature of the Claim; (b) the basis or reason for the Claim; (c) any other material information regarding the Claim; (d) the specific relief and/or proposed remedy sought; and (e) the intent to invoke this Article 12 (the "Notice of Claim" in this Article 12). Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the Notice of Claim, pending mediation pursuant to Section 12.03.

Section 12.03. Mediation. The Claim shall first be mediated before a mediator jointly selected by the parties. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute formally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The mediation shall occur within thirty (30) days following delivery of the Notice of Claim (the "Mediation Period" in this Article 12). Mediation shall be a condition precedent to the filing of a lawsuit. In the event Claimant does not appear for mediation, Claimant shall be deemed to have irrevocably waived the Claim, and Respondent shall be released from any and all liability to Claimant on account of such Claim. If mediation is successful, the resolution shall be documented in writing and signed by the parties. Thereafter, if either party violates the resolution, the other party may apply immediately to a court for relief. The mediation, unless otherwise agreed, shall terminate if the entire dispute is not resolved before the expiration of the Mediation Period. In the event that mediation is unsuccessful, then Claimant may bring an action in a court of proper jurisdiction in the County within sixty (60) days following the expiration of the Mediation Period. If no action is filed within the specified time, Claimant irrevocably waives the Claim and any and all right to proceed to litigation regarding the Claim. If the matter is settled through the mediator, the Claimant and Respondent shall share equally in the mediation costs and pay their own attorney fees, if any. If the matter is not settled by mediation and proceeds to litigation, the losing party in the litigation shall pay the prevailing party's portion of the mediation costs and its attorney fees, if any.

Section 12.04. Standards of Construction. If any Claim regarding defects in construction is made, the Claim shall be specified with particularity. Each location of any claimed defect must be identified and all evidence supporting each Claim, along with all repair methodologies and costs of repair, must be provided by the claimant in advance of mediation under Section 12.03. In any proceeding, it shall be rebuttably presumed that any construction done by a builder or Declarant was not defective, that the builder or Declarant adequately performed its obligations under its contract, and that the builder or

Declarant was not negligent if the builder or Declarant's performance was, at the time of construction, substantially in accordance with: (a) the standards of trade in the County; (b) any applicable building code in the County; or (c) any applicable national association of home builders residential construction guidelines. In any such proceedings, evidence of any scientific, engineering, or technical advancements or other knowledge or techniques, or any design theory or philosophy, or any construction or testing knowledge or techniques, where such advancements were discovered subsequent to the time of construction, shall not be admissible for any purpose. If any of Claimant's Claims relate, in any way, to any work completed by any of Declarant's or a builder's subcontractors or any materials and/or equipment provided by any suppliers, Declarant or the builder, as applicable, in its sole discretion, may join such subcontractors and/or suppliers to any proceeding with Claimant. The sole manner which may be used to establish breach of any obligations under this Declaration, any obligations which may exist by law or reason of any statute, any applicable industry standards, and/or Claimant's damages, including but not limited to appropriate repair costs, shall be through the testimony of a homebuilder with experience in the County. The court shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

Section 12.05. Limitation of Remedies. Every party subject to this Declaration disclaims and waives any claims for the following remedies and damages for any matters related to any Claim, whether a Claim is made on the basis of contract, tort or any other theory or basis at law or in equity: (a) punitive or exemplary damages; (b) claims for emotional distress or pain and suffering, and (c) claims for incidental and/or consequential damages (except as otherwise provided in this Declaration). Claimant further agrees that, subject to the other limitations in this Declaration, Respondent's total liability to Claimant shall be limited to, and in no event exceed, the amount of any insurance proceeds actually available with respect to any and all Claims, whether in contract, tort or otherwise.

Section 12.06. Attorney Fees and Jury Waiver. In the event of any dispute, the substantially prevailing party shall be entitled to recover its reasonable costs and attorney fees, including post-judgment collection costs, in addition to actual damages. All parties subject to this Declaration waive the right to a jury in any action or proceeding concerning their Lot, Common Area, the Property, the Subdivision, and/or any other Claims arising under or related to this Declaration, to the maximum extent permitted by applicable law.

ARTICLE 13

GENERAL PROVISIONS

Section 13.01. Easements. Easements for the installation and maintenance of utilities and irrigation, detention and other water facilities are reserved as shown on the Plat. 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 and maintenance of such utilities or facilities, or which may change the direction of flow of drainage channels in the easements. Declarant and the Association shall have the right (but assume no obligation) to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 13.02. Expansion.

- (a) Reservation of Right to Expand. Declarant reserves the development right to create a maximum of 243 total Lots, which includes one or more Lots (depending on governmental approvals) for the construction of the four (4) Apartment Buildings, each of which will contain eight (8) units, plus additional Common

Areas and Limited Common Areas, plus the right to create an additional owners association specific to the Apartment Buildings, at any time or times without approval by the Owners. The area of potential expansion consists of the Property, the areas depicted on the Plat as _____, which are legally described in Exhibit B.

- (b) Supplemental Declarations and Supplemental Plats. Expansion may be accomplished by the filing for record by Declarant in the real property records of the County one or more Supplemental Declarations and supplemental Plats setting forth the Lots and other real property, if any, to be included in the expansion, and a statement that this Declaration shall govern and apply to that property. That property may also be governed by additional covenants, conditions and restrictions contained in the Supplemental Declarations affecting the property covered by the Supplemental Declarations not inconsistent with the then-current language of this Declaration. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.
- (c) Expansion of Definitions. In the event of expansion, the definitions used in this Declaration shall be automatically extended to encompass and refer to the property subject to this Declaration, as expanded. The recording of supplemental Plat(s) in the real property records of the County 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. Subsequent to any expansion pursuant to this Section 13.02, any Conveyance of Lots within the Property, as expanded, shall transfer all rights incident to the Property, as expanded.
- (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 Plat(s) depicting the expansion Property and Supplemental Declaration(s) of public record in the real property records of the County.
- (e) Expiration. Declarant's rights under this Section 13.02 will expire twenty (20) years after the date of recording of this Declaration in the real property records of the County.
- (f) No Objection to Expansion. No Owner or Member of the Association shall have any right to object to the exercise of the developmental right set forth in this Section 13.02, including any permitted expansion by Declarant.

Section 13.03. Rights of Declarant Incident to Construction. An easement is retained by and granted to Declarant and its successors and assigns for access, ingress and egress over, in, upon, under and across any easements shown on the Plat, including but not limited to the right to store materials on such areas and to make such other use of such areas 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 Plat; 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 or his or her family members, guests or invitees, to or of that Owner's Lot.

Declarant, for itself and its successors and assigns, retains a right to store construction materials on any Lot owned by Declarant and to make such other use of it as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations under this Declaration, and the sale of the Lots. Any Special Declarant Rights created or reserved in this Declaration for the benefit of Declarant may be transferred to any person or entity by an instrument describing the rights transferred, and shall be recorded in the real property records of the County. The rights of Declarant reserved in this Section 13.03 shall expire twenty (20) years after the recording of this Declaration in the real property records of the County, except as to any land added to the Property under Section 13.02, for which those reserved rights will expire the later of ten (10) years after the recording of the document adding such land to the Property and twenty (20) years after the recording of this Declaration.

Section 13.04. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Property and Lots, binding Declarant and all persons and entities claiming by, through or under it 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 13.05.

Section 13.05. Amendment and Termination.

- (a) Subject to the provisions of C.R.S. § 38-33.3-217, 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 Members representing at least sixty-seven percent (67%) of the voting rights of the Members. Such agreement may be in any number of counterparts. Such amendment shall be effective when duly recorded in the real property records of the County.
- (b) Declarant reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation, the Bylaws and the Plat at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, grammar, dates, typographical and clerical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 13.06. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or 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 13.07. CCIOA Controls. Any provision of this Declaration that conflicts with the plain language of CCIOA shall be void. Any managing agent, employee, independent contractor or other person acting on behalf of the Association shall be subject to CCIOA to the same extent as the Association itself would be under the same circumstances.

Section 13.08. 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 13.09. Waiver. The failure of Declarant, 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 Declarant, 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 13.10. 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 13.11. Section Headings. 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.

Section 13.12. 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 13.13. 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, except for the easements dedicated to the public on any Plat and the City's right of access to repair or maintain, if necessary, drainage facilities.

Section 13.14. 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 City 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 and regulations and then, to the extent possible, the Owner must comply with the provisions of this Declaration, 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.

Section 13.15. Transfer of Declarant Rights and Obligations. Except to the extent expressly prohibited by applicable law, any or all rights or obligations (or both) of Declarant may be transferred by Declarant, including without limitation those rights described in Sections 2.06, 8.01, 8.02, 13.02, 13.03 and 13.05.

BOOKCLIFF ORCHARDS, LLC

DRAFT

Cody J. Davis, Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Subscribed and sworn to before me the ____ day of _____, 2018, by Cody J. Davis,
Manager of Bookcliff Orchards, LLC.

WITNESS my hand and official seal.
My commission expires: _____

Notary Public

*****DRAFT*****

EXHIBIT A
(Subdivision Plat)

*****DRAFT*****

EXHIBIT B
(Expansion Area)

*****DRAFT*****