

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DWELL PUD SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DWELL PUD SUBDIVISION (“Declaration”) is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by MDM Investments, LLC, a Colorado limited liability company (“Declarant”).

**RECITALS**

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

S2NW4NW4SE4 SEC 8 1N 2W & BEG S 63DEF17’25SEC E 737.53FT FR C4 COR SD SEC 8 S 89DEG51’41SEC E 15.13FT S 01DEG18’39SEC W 294.82FT S 15DEG01’ W 36.32FT N 0DEG10’42SEC E 329.86FT TO POB – 5.09AC;

B. Declarant desires to impose a general plan for the improvement, development, and maintenance of the above-described 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 establish Common Elements for the use of the Owners of Lots within the Property, and to establish a Colorado nonprofit corporation, Dwell Homeowners Association, to which such Common Elements shall be conveyed.

THEREFORE, Declarant covenants, agrees and declares that the Property 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, its successors and assigns, each Owner, his or her successors and assigns, or by the Association, 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 thoroughly detailed in Article 8.

Section 1.02. “Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.03. “Assessment” shall mean and refer to any assessment levied against one or more Owner(s) or Lot(s) as permitted by this Declaration or applicable law, including without limitation any of the following:

- (a) “Regular Assessment” shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot, including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.
- (b) “Special Assessment” shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his or her Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness or willful misconduct of any Owner or his or her 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 1.04. “Association” shall mean and refer to Dwell Homeowners Association, a nonprofit corporation incorporated under Colorado law.

Section 1.05. “Association Water” shall mean and refer to five (5) 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 1.06. “Board” or “Board of Directors” shall mean the Board of Directors of the Association.

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

Section 1.08. “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 1.09. “City” means the City of Fruita, Colorado.

Section 1.10. “Common Element” 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 Owners, including but not limited to all Tracts identified on the Plat and any Irrigation Facilities, retention area, detention area, fence, park, open space, pond, landscaping, and street or lighting fixture owned or controlled by the Association, as well as signage on any Common Element 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 Elements shall be as shown on the Plat.

Section 1.11. “Common Expenses” shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.12. “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 1.13. “County” means Mesa County, Colorado.

Section 1.14. “Declarant” shall mean and refer to MDM Investments, 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 1.15. “GVIC” means Grand Valley Irrigation Company and its successors and assigns.

Section 1.16. “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 Elements 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 Elements or easements within the Subdivision, or elsewhere outside of the Subdivision. Irrigation Facilities shall not include any risers, lateral pipelines, or other similar equipment or facilities serving an individual Lot which extend beyond the boundary lines of the Common Elements, irrigation and maintenance easement, or street, as the case may be, within the Subdivision and into a Lot, regardless of where located.

Section 1.17. “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 1.18. “Member” shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.19. “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 1.20. “Party Wall” means the material(s) located on the dividing Lot line between the adjacent, interior walls of adjoining Townhomes and beneath the roof shingles and behind any exterior stucco, stone, masonry, slate, wood, wood composite or siding materials of a Townhome.

Section 1.21. “Plat” means the plat of the Property by the name Dwell PUD Subdivision recorded with the County Clerk and Recorder, as it may be supplemented and amended from time to time.

Section 1.22. “Property” shall mean and refer to that certain real property in the County described in Recital Paragraph A of this Declaration 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 1.23. “Residence” shall mean the single-family dwelling improvements (including garage but excluding any outbuildings) located on a Lot.

Section 1.24. “Shared Improvement” means the material(s) located on or near the dividing Lot line between adjacent, adjoining Townhomes including, by way of example and not limitation, roofing materials, foundations, sub-flooring, and siding and other exterior wall coverings. A Shared Improvement such as a roof can be shared by more than two (2) Owners.

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. “Townhome” means a type of Residence with zero lot line setbacks and a common roof and/or one or more Party Walls connecting the structure to one or more similar structures.

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.

## **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. By accepting a deed to a Lot or other conveyance the acceptance of which would render the holder an Owner, membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by Conveyance of a Lot without additional action or documentation. No Owner shall be entitled to sever his or her ownership interest in a Lot from membership in the Association,

provided, that this shall not be construed as precluding an Owner from creating or severing a co-tenancy, joint tenancy, or any other form of co-ownership with any other person or persons.

Section 2.02. Allocation of Votes. Each Lot shall be allocated one vote in the Association. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of such Owners. There is agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If the Owners of the Lot are unable to agree, their vote will not be counted.

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

Section 2.04. Directors and Officers 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 2.05, the Board shall be comprised of not fewer than three (3) directors, with the number of directors specified in the Bylaws.

Section 2.05. 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 2.05.
- (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 2.05(a), the Owners shall elect a Board of Directors in accordance with Section 2.04 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 2.05, 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.

Section 2.06. Quorum. Quorum requirements are specified in the Bylaws.

Section 2.07. Officers of the Association. The officers of the Association are specified in the Bylaws.

Section 2.08. 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 Elements.

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. The Association shall have the authority to adopt such rules and regulations as it deems necessary or convenient for the governance of the Property. Further, to promote responsible governance, the Association shall adopt policies, procedures, and rules and regulations as required in CCIOA, specifically C.R.S. § 38-33.3-209.5(1)(b).

Section 2.10. 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 2.10 shall be determined by the Board.

Section 2.11. Insurance. The Association shall obtain property insurance insuring against damage to the Common Elements for broad form covered causes of loss and commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, in amounts deemed sufficient in the judgment of the Board of Directors. The Association, as attorney-in-fact, shall have authority to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

Section 2.12. 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 2.13. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate or convey all or any part of any Common Elements, the Association Water, or any other

Association asset. However, no such encumbrance, dedication or conveyance shall be effective unless approved by the Members, as evidenced by 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 recorded in the real property records of the County. Any of the instruments required by this Section 2.13 may be signed in counterparts that shall together constitute a single agreement.

Section 2.14. 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 during the period of Declarant's control of 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 2.15. Public Disclosures After Declarant's Control. Within ninety (90) days after assuming control from Declarant pursuant to Section 2.05, the Association shall make the following 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 this Declaration;
- (f) The reception number or book and page for the main document that constitutes this 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 2.16. 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 2.15) the information described in subsections 2.15(g) through 2.15(o).

### **ARTICLE 3**

#### **PROPERTY RIGHTS IN THE LOTS AND COMMON ELEMENTS; MAINTENANCE**

Section 3.01. Title to Common Elements. Prior to the issuance of a certificate of occupancy for any Residence within a particular filing, Declarant shall convey fee simple title to the Common Elements located within that filing 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 Elements, including but not limited to an easement for ingress and egress over and through the Common Elements. 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 Elements;
- (b) The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Elements or any part of them for the purpose of improving the Common Elements, 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, use of Common Elements, and/or any benefits of membership in the Association 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 Element 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 Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members representing at least two-thirds (2/3) of the voting rights of the Members has been recorded agreeing to such dedication or transfer, and further provided that written notice of the proposed action is sent to every Member no fewer than thirty (30) days nor more than fifty (50) days in advance;
- (e) The right of Declarant or its designees to enter upon the Common Elements 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 Elements while maintaining, repairing or making replacements in the Common Elements.

Section 3.03. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Common Elements 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 this Declaration or law, by waiver of the use and enjoyment of the Common Elements or the facilities on them, 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 Elements 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 Elements to all Members, nor shall any

Owner place any structure or fence (except those installed by Declarant) upon the Common Elements.

Section 3.06. Maintenance of Common Elements. Declarant and its successors and assigns shall install all Common Elements, after which the Association shall maintain all Common Elements. Any landscaping and fencing located on the Common Elements shall be maintained in accordance with any applicable standards of the City. The Association shall maintain all sidewalks and pedestrian trails within the Subdivision including, by way of example and not limitation, the removal of accumulations of snow from all sidewalks, pedestrian trails, and other impervious surfaces in or on the Common Elements within the Subdivision. Costs associated with snow removal from the Common Elements shall be a Common Expense.

#### **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 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 a 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 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 Elements; or for any other purpose of the Association, as those purposes (as amended from time to time) are specified in this Declaration, the Bylaws, or the Articles of Incorporation; or as otherwise permitted by 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 2.05, 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 Regular Assessment, all expenses of the Association shall be paid by Declarant.

Section 4.05. Limitation 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 annual Regular Assessment for an unimproved Lot shall never be less than \_\_\_\_\_.
- (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, as the case may be.

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 based on a budget adopted no less frequently than annually by the Association, 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. 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. 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.

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. 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 any Common Element, or any other Common Expense, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any family or household member, guest or invitee of such Owner, such expense and all related fees, costs and expenses of or to the Association shall be the personal obligation of such Owner and may be made part of any Assessment against such Owner and that Owner's Lot(s). 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 13.

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 Members and shall set a date for a meeting of the Members 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. If, at the budget meeting described in Section 5.03, a majority of all Members, whether or not a quorum is present, vetoes the budget, the periodic budget last proposed by the Board and not vetoed by the Members must be continued until a subsequent budget proposed by the Board is not vetoed. If the Members do not veto the proposed budget, the budget is ratified, whether or not a quorum is present.

Section 5.05. 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 5.06. Audit and Review. Upon the request of at least one-third of the voting rights of the Members, 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 5.07. 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**

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 payment 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 of collection 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 single-family Residence and one garage with a minimum of two (2) automobile bays. The erection of more than one Residence per Lot is prohibited.

Section 7.02. Building Site 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 office and/or model homes 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 single-story 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 1,000 square feet by outside measurement. In the case of a two-story Residence, the lower ground level shall be at least 600 square feet by outside measurement. All single-family detached Residences shall have an attached garage capable of storing at least two (2) passenger vehicles. For multi-story Residences, garden level basements (as the case may be) shall be permitted so long as the main floor of the Residence is at least 600 square feet by outside measurement.

Section 7.06. Building Plans, Materials and Colors.

- (a) The exterior of all Residences shall be that of a modern urban cottage design. The façade of the exterior surface of all Residences and building structures within the Subdivision shall be constructed of and maintained primarily with wood or wood composite siding, but not vinyl or similar siding. Wood, stone, brick, metal and/or stucco accents are permissible materials and are encouraged. The accent materials used on Residences and other building structures within the Subdivision shall collectively be not less than ten percent (10%) of the overall surface area of the Residence or building structure and shall not exceed forty percent (40%) of the overall surface area of the Residence or building structure.
- (b) 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.

- (c) For all Residences, exterior color schemes shall be composed of earthen tones including tan, taupe, black, white, and grey, and blend into the surrounding landscape and terrain. Accents of earthen color shall not be less than ten percent (10%) of the overall surface area of the Residence or building structure. Bright or highly visible colors will not be allowed.
- (d) All Residences shall have at least one front facing porch or deck with a minimum sixty (60) square feet of floor area by outside measurement.
- (e) All Residences with sloped roofs must have a designed roof pitch of 8:12 or greater. All Residences with flat roofs must have a minimum designed roof pitch of 1:4. For all Residences and permitted structures, roof material shall be asphalt architectural shingles, metal, tile, or slate material.

Section 7.07. Residence Maintenance. The exterior of each Residence shall be maintained and repaired by its Owner, including but not limited to costs for the purchase, installation, construction, maintenance, and expected or unexpected repair or replacement of any exterior component of a Residence such as, by way of example and not limitation, roofs, exterior wall coverings, doors, windows, foundations, patios and other hard surfaces, decks, HVAC equipment, and satellite systems. Such work shall be performed only upon the approval of the Board. If an Owner fails to maintain or repair the exterior of his or her Residence in accordance with this Declaration or any rules or regulations adopted by the Association, the Association may, in the Board's discretion without obligation, hire out such maintenance or repair as is necessary to bring such Residence into compliance and levy a Special Assessment against the Owner and Lot of such Residence for those costs, plus an administration fee equal to twenty-percent (20%) of the cost of the maintenance or repair. Except as may otherwise be provided in this Declaration or any rules or regulations adopted by the Association, an Owner may make any improvement or alteration to the interior of his or her Residence so long as such improvement complies with any applicable, law, code, rule or regulation.

Section 7.08. Landscaping Installation and Maintenance. Declarant shall install all landscaping on all Common Elements and front yard areas of each Lot, and the Association shall maintain all such landscaping thereafter, except as provided in Section 7.08. The cost for maintaining the landscaping shall be a Common Expense determined by the Board of Directors and included in the annual budget prepared by the Board.

Section 7.09. Customized Landscaping. All front yard landscaping and any other landscaping visible from any street shall compliment the residential character of the Subdivision as described in Section 7.06. If an Owner wishes to install custom landscaping in the rear or side yards of his or her Lot that otherwise differs from the remainder of the Lots, including but not limited to flower gardens, vegetable gardens and raised-bed plantings, the Owner must submit a landscaping plan showing the dimensions of the project, plant number and type, and watering requirements to the ACC as provided in Article 8. Any significant changes to existing landscaping and/or individual irrigation systems must be approved by the ACC. The ACC shall evaluate the landscaping plan as provided in Article 8. After the ACC has approved a plan for custom landscaping, the Board shall determine the additional costs, if any, that the Lot shall be assessed for additional maintenance and/or water that may be required for that Lot as a result of such custom landscaping, which will be billed to the Owner as a recurring Special Assessment. The Association shall



have no obligation to maintain any custom landscaping approved by the ACC unless the Board agrees, in writing, to include the custom landscaping as a maintenance obligation of the Association. Alternatively, the Owner may maintain the approved custom landscaping at his or her expense; provided, however, that the Owner's Assessments will not be reduced if the Owner elects to maintain his or her custom landscaping. The intent of this Section 7.09 is to allow Owners the ability to customize their landscaping if they desire without causing accounting burdens for the Association. If an Owner fails to maintain his or her custom landscaping after notifying the Association that the Owner will do so, the Association may, in the Board's sole discretion, remove the custom landscaping and bill the Owner for the cost of removal or maintain the custom landscaping and bill the ongoing maintenance costs to the Owner as a Special Assessment.

Section 7.10. Driveways.

- (a) Driveways shall be concrete unless otherwise approved by the ACC.
- (b) The Owners shall be responsible for the surface cleaning of their Driveways, which includes, by way of example and not limitation, the removal of snow, leaves and debris.
- (c) The Owners shall be responsible for the surface cleaning of any sidewalks located in front of and on each side of their Lots and Driveways (as the case may be).

Section 7.11. Air Conditioning and Evaporative Coolers. No window mounted air conditioning (refrigeration) units are allowed. All air conditioning units shall be ground mounted on a concrete pad, unless otherwise approved by the ACC. The foregoing shall not restrict the location or placement of evaporative coolers in any way.

Section 7.12. Vehicle Parking, Storage and Repair.

- (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 or as needed for construction or repair of structures on Lots or within Lots or Common Elements. 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) Notwithstanding anything to the contrary stated in this Section 7.12, 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 7.12 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, driveways or parking areas.

Section 7.13. Tract B Open Space, Trails and Parks. Tract B, as depicted on the Plat, is a community park which shall be used for recreational activities and/or uses which do not conflict with Tract

B's function as an area dedicated for open space. Tract B, including any improvements, equipment, fixtures, and pedestrian trails are Common Elements for the use and enjoyment of the Owners and occupants of the Subdivision. Uses allowed on Tract B shall include but not be limited to walking and biking, playground activities, youth sports practices, picnicking, community movie nights, and similar activities. Notwithstanding anything to the contrary in this Declaration, no use shall be allowed on Tract B that is incompatible with the residential character of the Subdivision or the classification of Tract B as open space as determined by the City.

Section 7.14. Parking Pod. A parking pod with twelve (12) parking spaces is located south of Tract Band depicted on the Plat. The parking pod is a Common Element maintained by the Association for the benefit of Owners and occupants of the Subdivision and their guests, family members, and invitees, for the purpose of accessing and enjoying Tract B.

Section 7.15. 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 neighboring Lots and streets.

Section 7.16. 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 in a manner which makes them visible from a street. This Section 7.16 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 7.17.

Section 7.17. 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 through 10 and rules and regulations adopted by the Association and not contrary to law; (d) the Colorado flag, subject to rules and regulations adopted by the Association and not contrary to law; (e) a service flag, subject to rules and regulations adopted by the Association and not contrary to law; and (f) 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 7.17 or any other restrictions.

Section 7.18. Fences, Planters and Hedges.

- (a) Declarant shall construct all perimeter fencing located within the Subdivision and shall construct all front yard fencing located on Lots facing Tract B as described in Section 7.13. All fences, whether installed by Declarant or by Owners, shall be constructed using horizontal vinyl fencing materials. 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. 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. Owners shall be responsible for constructing fencing located within side yards between Lots in accordance with the design standards set forth in Section 7.06 and in accordance

with this Section 7.18. Fencing located within side yards between Lots shall be no more or less than five (5) feet in height. Any fencing located on a Lot which is directly adjacent to park space shall be no more or less than three (3) feet in height and constructed using vinyl fencing materials.

- (b) All fences erected by Declarant shall be maintained by the Association as a Common Element. All expenses associated with fences shall be Common Expenses.
- (c) No fence may be altered in any way without the approval of the Board in accordance with Article 8. All new fences must be approved by the ACC prior to construction. No fence will be permitted without the applicant first obtaining all required fence permits from the City of Fruita. The ACC may, from time to time, adopt written fencing standards, details and colors which shall be provided to each Owner upon request.

Section 7.19. 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 7.20. 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 7.21. 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. The restrictions in this Section 7.21 are in addition to, and not in lieu of, any applicable code or regulation that limits the number of animals permitted on each Lot.

Section 7.22. Residential Use. No Lot may be used for commercial purposes, except for home occupations. For purposes of this Section 7.22, "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. Specifically, home occupations shall be permitted as accessory to any permitted residential use subject to the Home Occupational Standards of Section 17.07.070(B) of the Fruita Land Use Code effective January 1, 2020 (the "Land Use Code") and in effect at the time of this Declaration. Allowed uses include, but are not limited to, single-family attached and detached dwelling units, residential accessory uses, home occupations and childcare/daycare within the Resident and short-term residential property uses. Home childcare, home daycare, and residential accessory uses shall be allowed as defined in the Land Use Code in effect at the time of this Declaration. 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 7.23. Any other commercial use shall be considered a

nuisance within the meaning of Section 7.24. Declarant shall not be subject to the provisions of this Section 7.22. Notwithstanding anything to the contrary in this Section 7.22, the Association may designate two (2) weekends during each calendar year for an Owner to conduct a garage sale on his or her Lot. At all other times not so designated, garage sales are prohibited on any Lot within the Subdivision.

Section 7.23. Leases.

- (a) Owners shall have the right to lease their Lots for a period which shall exceed twenty-eight (28) days provided that: (a) all leases are in writing; (b) the lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration and any rules and regulations of the Association (specifically including watering requirements); and (c) the lease and/or rental arrangement comply with all rules and regulations of the City governing leasing and short-term rentals. The foregoing shall be deemed to be implied terms of each such lease, whether or not actually contained in or attached to the lease. The term "lease" in this Section 7.23 shall include any agreement for the leasing or rental of a Lot or any portion of a Lot, and shall specifically include, without limitation, short-term rental agreements (which may be electronic in format and facilitated by a short-term rental company) and month-to-month leases.
- (b) No Owner shall cause his or her Lot, or any portion thereof, to be rented for any transient, hotel, or short-term vacation rental uses (specifically including short-term, daily rentals through companies such as VRBO, Airbnb, HomeAway, and similar organizations), which, for purposes of this Declaration, shall be defined as any rental for any period less than twenty-eight (28) consecutive days in any one (1) calendar year unless: (a) all short-term rental uses are in writing; (b) the short-term lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration and any rules and regulations of the Association (specifically including watering requirements); and (c) the lease and/or short-term rental arrangement comply with all rules and regulations of the City governing leasing and short-term rentals including, if applicable, use and lodging taxes, registration with the City, and approval of a conditional use permit for the operation of a short-term vacation rental use.
- (c) The time sharing of any Lot within the Subdivision is prohibited. The term "time sharing" in this Section 7.23 shall mean the use of Property within the Subdivision as a secondary residence at specified times by several joint Owners.
- (d) This Section 7.23 may be amended only by the affirmative vote or agreement of Members representing at least sixty-seven percent (67%) of the voting rights of the Members.

Section 7.24. 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 7.24.

Section 7.25. Lot Maintenance. Except for the Association's obligation to maintain the landscaping in the yard area of each Lot, each Lot shall be properly maintained by the Owner of such Lot. No rubbish, debris or other such accumulations of any kind shall be placed or permitted to accumulate or remain on any Lot. In the event any Owner fails to maintain his or her Lot(s) in accordance with this Declaration or any rules or regulations adopted by the Association, the Association may hire out such maintenance as is necessary to bring such Lot(s) into compliance and levy a Special Assessment against the Owner and Lot for those costs, as provided in this Declaration. Owners are responsible for snow removal from the walkways and driveway on their Lot.

Section 7.26. 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 7.27. Sales Office and Model Homes. Despite anything to the contrary stated elsewhere in this Declaration, Declarant may maintain and operate a sales and/or management office and a maximum of two (2) model homes on the Property. The sales office may be located on any Lot owned by Declarant and may be relocated to any other Lot owned by Declarant from time to time, at Declarant's sole discretion. Declarant may maintain one or more signs on the Common Elements for the purpose of advertising the Property and the sale of Lots. Temporary parking in front of and adjacent to the sales and/or management office and model homes shall be allowed as long as the same are being maintained and operated in the Subdivision for sale activities. The provisions of this Section 7.27 shall control in the event of any conflict with any other provision contained in this Declaration.

Section 7.28. No Re-subdivision of Lots. The re-subdivision of any Lot within the Subdivision is prohibited, except by Declarant.

## **ARTICLE 8**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 8.01. ACC Approval. No building, fence, wall, sign or other structure or improvement (temporary or otherwise) shall be commenced, erected or maintained upon the Property (including the Common Elements), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, grading, irrigation systems, fences, and 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 set forth 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 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 Declarant. Declarant may voluntarily surrender Declarant’s right to appoint and remove members of the ACC; but in that event Declarant may require, for the duration of the period of Declarant’s right to appoint, 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 set forth 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, sidewalks, landscaping or grading installed by Declarant within any Common Element, provided that the foregoing prohibition shall not prevent the repair and maintenance of the same.

Section 8.04. Vote and Appeal. An affirmative 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, but 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. Projects approved by the ACC 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 require Members to re-submit their request in accordance with Section 8.03. The ACC, in its sole discretion, may grant an extension for good cause shown. This Section 8.08 shall not apply to Declarant.

Section 8.09. No Liability. In no event shall Declarant, the Association, the Board, the ACC, or any of the members of those entities 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 their 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 the initial construction, remodeling, improvement, 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** **PARTY WALLS**

Section 9.01. Rights. The Owners of adjoining Townhomes separated by a Party Wall shall each have a perpetual, non-exclusive right to access, inspect, maintain, repair, improve and replace the Party Wall. This right shall be binding upon and inure to the benefit of the Owners and their respective heirs, successors and assigns. It shall run with the land and is not a personal covenant; provided, however, that assignment by either party of his or her Lot shall not release that party from liability under this Article 9, unless specifically released by the other party in writing.

Section 9.02. Shared Improvements. The Owners of adjoining Townhomes benefiting from a Shared Improvement shall each have a perpetual, non-exclusive right to access, inspect, maintain, repair and replace the Shared Improvement; provided, however, that if such right requires access to a neighboring Lot, such access shall be granted only after reasonable advance notice is provided by the Owner seeking access (except in the case of an emergency). This right shall be binding upon and inure to the benefit of the Owners and their respective heirs, successors and assigns. It shall run with the land and is not a personal covenant; provided, however, that assignment by an Owner of his or her Lot shall not release that Owner from liability under this Article 9.

Section 9.03. Maintenance, Repair and Replacement. Both Owners on either side of an adjoining Party Wall shall share equally in the cost of maintenance, repair and replacement of their Party Wall, unless such maintenance, repair or replacement is caused or necessitated solely by one of the Owners, or a family member, guest, licensee or invitee of an Owner, in which case that Owner shall be solely responsible for the cost of such maintenance, repair or replacement. If any maintenance, repair or replacement is caused or necessitated by the Owners in anything but equal proportion, the Owners shall bear the costs of such maintenance, repair or replacement in proportion to their fault.

Section 9.04. Submittal of Plans. Plans for any maintenance, repair or replacement of a Party Wall that may or will disturb the exterior appearance of a Townhome or any utilities, lines, pipes, wires, conduits or systems that serve another Townhome must be submitted to and approved by the ACC prior to such disturbance.

Section 9.05. Disputes. If the Owners of adjoining units separated by a Party Wall are unable to agree as to whether the Party Wall is in the need of maintenance, repair or replacement, the Owners shall submit their dispute to the ACC who shall decide the matter. The ACC's decision shall be treated as an arbitrator's decision, binding on both parties.

Section 9.06. Contribution. An Owner's right to contribution from the other Owner shall run with the land and shall pass to such Owner's heirs, successors and assigns.



Section 9.07. Survival. Notwithstanding anything in this Declaration to the contrary, to the extent feasible the terms and conditions of this Article 9 shall survive termination of this Declaration.

## **ARTICLE 10**

### **ASSOCIATION WATER**

Section 10.01. 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 10.02. 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, improving 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 or Association Water. 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 10.03. Irrigation Assessments. Any billings by any person or entity associated with Association Water shall be a Common Expense.

Section 10.04. 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 10.05. 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 (as the case may be) and Association Water shall be borne by the Association.

Section 10.06. Limitations. The Association Water includes 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 11** **INSURANCE**

Section 11.01. General. The Association shall obtain and maintain insurance as required by CCIOA and this Declaration.

Section 11.02. 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 Elements, 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 11.03. 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 11.04. 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 11.05. 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 11.06. 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 the same amount required in Section 11.05 unless the Association names such a person as an insured employee in a contract of fidelity insurance described in Section 11.05. 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 11.06.

Section 11.07. Fidelity Bond Premiums. Premiums for bonds required of the Association under this provision are Common Expenses.

Section 11.08. 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 12**

### **DAMAGE OR DESTRUCTION OF COMMON ELEMENTS**

Section 12.01. 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 Elements. 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 12.01.

Section 12.02. 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 Element means restoring the same to substantially the same condition in which it existed prior to the damage. The obsolescence of any Common Element 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 12.03. Application of Insurance Proceeds. In the event of damage or destruction to any improvement installed by the Association on or within a Common Element 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 Element 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 12.03 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 13**  
**DISPUTE RESOLUTION**

Section 13.01. General. Except for collection and lien foreclosure actions against Owners, specifically including but not limited to actions under Article 6, 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 13, 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 13.02. Initial Notification; Negotiation. For each claim governed by this Article 13 (a “Claim” in this Article 13), the claimant (“Claimant” in this Article 13) shall give notice to the other party or parties against whom the claim is asserted (“Respondent” in this Article 13), 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 13 (the “Notice of Claim” in this Article 13). 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 13.03.

Section 13.03. 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 13). 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, 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 13.04. 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 13.03. 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’s 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 13.05. 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 13.06. 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 14**

### **GENERAL PROVISIONS**

Section 14.01. 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 14.02. Expansion.

- (a) Right to Create. Declarant reserves the development right to create a maximum of thirty-seven (37) lots and additional Common Elements at any time or times without approval by the Owners.
- (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 Elements 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, as further provided in Section 4.07. Subsequent to any expansion pursuant to this Section 14.02, 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 14.02 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 14.02, including any permitted expansion by Declarant.

Section 14.03. 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 occupant 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 14.03 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 14.02, 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 14.04. 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 14.05.

Section 14.05. Amendment and Termination.

- (a) Subject to the provisions of C.R.S. § 38-33.3-217, all or any portion of this Declaration or the Plat 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) The Association, acting through the Board of Directors pursuant to C.R.S. § 38-33.3-303(1), may petition the Mesa County District Court for an order amending the Declaration in accordance with C.R.S. § 38-33.3-217(7).
- (d) 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 14.06. 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 14.07. 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 14.08. 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 14.09. 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 14.10. 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 14.11. 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 14.12. Binding Effect. The provisions of this Declaration shall be binding upon and inure for the benefit of Declarant, each Owner, and each and all of their heirs, personal representatives, successors in interest, and assigns.

Section 14.13. 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 14.14. 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 14.15. 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 2.05, 8.01, 8.02, 14.02, 14.03 and 14.05.

MDM INVESTMENTS, LLC

---

Michael Maves, Manager



STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA        )

Subscribed and sworn to before me the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Michael Maves,  
Manager of MDM Investments, LLC.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public