

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
-FOR-
BERG SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BERG SUBDIVISION (“Declaration”) is made and entered into this ____ day of _____, 2023, by Willie Berg and Neomi M. Berg (hereinafter collectively referred to as the “Declarant”).

RECITALS

A. Declarant is the owner of certain real property in the City of Fruita, Mesa County, Colorado, known as the Berg Subdivision which is more particularly described as follows: **COMMENCING at the Southwest Corner of the Northwest Quarter of the Southwest Quarter (NW¼ SW¼) of Section 16, Township 1 North, Range 1 West of the Ute Meridian, whence the Southeast corner of said NW¼ SW¼ bears S89°53'36"E, a distance of 1319.90 feet for a basis of bearings with all bearings hereon relative thereto; thence along the South line of said NW¼ SW¼ S89°53'36"E, a distance of 514.81 feet; thence N25°56'54"W, a distance of 33.39 feet to the North right-of-way line of J !j,(0 Rood described by Reception No. 2745377 and the POINT OF BEGINNING; thence along said North line N89°59'53"W, a distance of 91.58 feet to the Northeasterly right-of-way of J 3/10 Road as described by Reception No. 202965; thence along said Northeasterly line N34° 52' 00" W, a distance of 619.37 feet; thence N78° 51' 56" E, a distance of 444.65 feet to the centerline of the Independent Ranchmans Canal; thence along said centerline the following six (6) courses: 1) S40°48'46"E, a distance of 46.82 feet; 2) along a curve to the right having a central angle of 58°33'56", a radius of 95.00 feet, an arc length of 97.11 feet, and a chord which bears S11°31'48"E, a distance of 92.93 feet; 3) S17°45'09"W, a distance of 108.55 feet; 4) S18°38'10"W, a distance of 165.19 feet; 5) along a curve to the left having a central angle of 44°35'03", a radius of 172.00 feet, an arc length of 133.84 feet, and a chord which bears S03°39'22"E, a distance of 130.49 feet; 6) S25°56'54"E, a distance of 86.292 feet to the POINT OF BEGINNING.** (the "Property").

B. Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of common areas and other common facilities; and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens, hereinafter set forth, in accordance with and pursuant to the Colorado Common Interest Ownership Act, § 38-33.3-103(22), *et seq.*, C.R.S. (the “Act” or “CCIOA”), each and all of which is and are for the benefit of said Property and each owner thereof; and

C. Declarant has deemed it desirable, for the preservation of the values and amenities in said community, to create an agency with the power of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, namely the Berg Owners Association, Inc.; and

D. The Property shall be conveyed subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

E. Declarant is currently subdividing the Property, being platted as the Berg Subdivision (containing 1 residential “Lot” and an existing residential structure), which plat has been or will be caused to be recorded with the Mesa County Clerk and Recorder. A copy of the final plat of the Property, showing the one (1) residential Lot and the existing residential structure, being subdivided at this time is being contemporaneously herewith.

WHEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1.1. “Architectural Control Committee” or “ACCO” shall mean the building and design committee described in Article VI, below.

Section 1.2. “Association” or “HOA” shall mean and refer to the Berg Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 1.3. “Association Expenses” shall mean the Owner’s pro rata share of the expenses necessary to implement this Declaration, including, but not limited to, the costs to maintain and repair and/or reconstruct the Common Area (as defined herein), the other structures, appurtenances and improvements to the Property, ditches, management costs, reserves, capital improvements, assessments, and all other charges which the Association may levy upon the Owners in accordance with this Declaration. Common Expenses are part of the Association Expenses.

Section 1.4. “Association Water” or “Water” means irrigation, run-off and storm drainage waters.

Section 1.5. “Board of Directors” or “Board” shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the By-laws of the Association or appointed by Declarant as therein provided.

Section 1.6. “By-laws” shall mean the By-laws adopted by the Association, as amended from time-to-time.

Section 1.7. “Common Area” means all portions of the Property that are not Lots, rights of way or easements dedicated to the City of Fruita, all as shown on the Plat of Berg Subdivision or, as recorded with the Mesa County Clerk and Recorder subject to changes made to such easements by Declarant as Declarant requires when future plats to Berg Subdivision are made from time-to-time.

Section 1.8. “Common Expenses” means: all expenses expressly declared to be common expenses by this Declaration, any supplemental declaration or by the Bylaws of the Association; all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area, and all expenses lawfully determined to be Common Expenses by the Board of the Association.

Section 1.9. “Dwelling Unit” shall mean and refer to any residential improvement constructed within the Property, including accessory buildings. A Dwelling Unit may be detached residential structure a townhome and/or an apartment.

Section 1.10. “Declarant” in the singular form shall hereinafter collectively mean and refer to the Prolo Family Clovis, LLC, and The John F.C. Schneider Trust Dated August 22, 2002, and their respective successors and assigns; provided, however, that Declarant for the purposes of executing all

future alterations to the Declaration shall require the signature of both the Prolo Family Clovis, LLC, and The John F.C. Schneider Trust Dated August 22, 2002, and their respective successors and assigns. “Declarant” shall also refer to any successor or assign as may hereafter be designated by the Declarant by a written instrument duly recorded in the office of the Clerk and Recorder of Mesa County, Colorado (“County Clerk”).

Section 1.11. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, as the same may be amended from time-to-time.

Section 1.12. “First Mortgage” shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering a Lot recorded in the records of the County Clerk, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.13. “First Mortgagee” shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 1.14. “Lot” shall mean and refer to any separate numbered residential lot shown upon any recorded subdivision map or plat of the Property or any portion thereof, as the same may be amended from time-to-time, together with all appurtenances and improvements thereon. "SF" Lot means a lot on which one detached single-family residence may be constructed, “TH” Lot means a lot with a residence with one or more party walls but has a separate numbered residential lot.

Section 1.15. “Member” shall mean and refer to each Owner of a Lot that is subject to this Declaration, and each guest, agent and invitee of such Owner. Membership in the Association shall be appurtenant to, and may not be separated from ownership of a Lot.

Section 1.16. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, 3 of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.17. “Property” or “Properties” shall mean and refer to that certain real property described in this Declaration, namely the Lots created by the Berg Subdivision Final Plat, as it may be amended from time-to-time. In the event that Declarant acquires additional land for development, and subjects such additional land to this Declaration, and includes such additional land into membership in the HOA, such additional land may be included within the term Property or Properties.

Section 1.18. “Subdivision” shall refer to the subdivision created by the Berg Subdivision Final Plat, and, upon the recordation of any plat further subdividing the Property.

Section 1.19. Terms not defined herein shall have the meaning defined in the City of Fruita’s (“City”) Zoning and Development Code, as amended from time-to-time.

ARTICLE II **PROPERTY RIGHTS**

Section 2.1. Property Subject to Declaration. Declarant, as the owner of all of the Property, does hereby subject all of the Property to the provisions of this Declaration.

Section 2.2. Conveyances Subject to Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in the Property, and their respective heirs, successors, representatives or assigns. The recording of this Declaration shall be sufficient to create and reserve on the Property all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein.

Section 2.3. Owners' Right of Enjoyment. Subject to the provisions of Section 2.4 of this Declaration, every Owner shall have a nonexclusive right to the use of the Common Area and such right shall be appurtenant to and shall pass with the title to every Lot, subject to Declarant's unilateral right, hereby reserved, to modify the location of irrigation and drainage easements shown on the Berg Subdivision Final Plat or conveyed to the HOA by separate instrument subject to the requirement that any such change shall not result in a loss of irrigation water to, or the addition of drainage water from off the lot into the lot in question.

Section 2.4. Extent of Owners' Right. The right of use and enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply;
- (b) The right of the Association to suspend the voting rights of a Member during any period when any assessment against a Member's Lot remains unpaid for thirty days or longer, or for any infraction of its adopted rules and regulations; and
- (c) The right of the Association to close or limit the use of the Common Area while maintaining, repairing or making replacements thereto, or in the event a Member has had voting rights suspended.

Section 2.5. Common Area. The Association shall have all rights of ownership and shall be responsible for the maintenance and/or protection of the Common Area, as defined herein, or as added by the filing of future plats further subdividing the Property, subject to the right of use and enjoyment of the Owners consistent herewith.

Section 2.6. Limited Exemption of Lot 6. The existing building, structures, and other improvements located on Lot 6, as shown on the Plat, shall be allowed to remain on said Lot 6 (the "Existing Improvements"). The Existing Improvements shall be considered in compliance and not in violation of this Declaration for purposes of this Declaration and the breach of any covenant(s) that may presently exist or exist in the future, and despite any contention or determination that the Existing Improvements are non-compliant or fail to conform with the Declaration, its covenants, or any of its requirements contained herein. Furthermore, the Existing Improvements and Lot 6, generally, may be modified, expanded, remodeled or otherwise changed without approval from the ACCO and without violating this Declaration in any manner whatsoever; provided, however, that the Owner of Lot 6 shall otherwise comply with all applicable state, county, municipal, or other applicable governmental entity or political subdivision of this state and its laws, rules, and regulations and shall make best efforts to cause for any such modifications, expansions, remodels, or changes to conform to either the original style of the Existing Improvements or the guidelines contained in this Declaration. Otherwise, Lot 6 shall be specifically exempted from the covenants and requirements contained in this Declaration, including, without limitation, the obligation to pay any assessments, with the exceptions that Lot 6 shall be subject

to the levy and payment of any assessments that pertain to the use of the irrigation system(s) within the Subdivision.

ARTICLE III
ALLOWED USES

Section 3.1. General. All of the Lots shall be used only for residential purposes.

(a) **Residential Structure and Use.** All Lots shall be used solely for single-family residential purposes. Only single-family dwellings, a private garage, and other outbuildings directly incidental to single-family residential use shall be erected, altered, placed, or permitted to remain on any Lot, along with one accessory structure per Lot, as permitted by the City, shall be constructed or permitted on the forty-seven (47) single family detached Lots ("SF" Lots") SF Lots created by the Berg Subdivision Final Plat.

(b) **Garage Restriction.** Every residence constructed on a SF Lot shall have a private garage for no less than two (2) vehicles.

(c) **Driveways.** Every SF Lot driveway shall be at least eighteen-feet (18') wide and shall be constructed and maintained as a concrete paved surface.

(d) **Recreational Vehicles.** An Owner may keep two recreational vehicles on an SF Lot so long as it is screened from view from other SF Lots and the nearest public street and complies with §§ 3.2 and 3.8(b) hereof. Such screening may be a fence or other improvement, as approved by the ACCO.

Section 3.2. Temporary, Modular Structures. No structure of a temporary nature, such as a tent, trailer house or recreational vehicle, shall be used on any Lot at any time as a residence, either temporarily or permanently. No mobile, modular or manufactured structure shall be allowed on any Lot, except that pre-fabricated storage sheds of not more than two-hundred (200) square feet are allowed if located on the rear half of a Lot and if screened from view from adjacent SF Lots and the nearest street. All other structures on a Lot shall be of new construction built on-site.

Section 3.3. Building Height. No structure on an SF Lot shall exceed height standards as defined in the City Code.

Section 3.4. Paint & Building Materials. Exterior paints for any structure on any Lot or Common Area shall be colors known to be neutral or subdued, by way of example, without limitation, such colors may range from: creamy white, light to medium grey, light sand color to dark brown, natural wood or stone, black, or navy. The Owners shall not have the right to paint their front doors any color they choose and any paint colors for the front doors must fall under the paint colors set forth herein, except that stained doors are specifically permitted. No bright or garish colors shall be permitted on the exterior body of any structure on any Lot or Common Area.

Section 3.5. Pets-Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot for commercial purposes. A reasonable number of household pets, such as dogs and cats, may be kept provided that they are not kept, bred or maintained for commercial purposes. A "reasonable number" of household pets shall mean no more than three (3) household pets per SF Lot; however the HOA may grant exceptions in its discretion and subject to such conditions as the HOA may impose. All pets shall be controlled and contained so that they do not become a nuisance to the neighborhood and do not run at large or endanger or harass other animals or wildlife. Any uncontained

pet shall be on a leash of ten (10') or less in length and under the direct control of a responsible individual. The owner of any dog shall prevent the dog from persistent barking, baying, or howling which can be heard by a person with ordinary hearing at any place not on the Lot, whether the dog is on or off the Owner's Lot. Each Owner is responsible for each pet contained on such Owner's Lot or Unit, and shall control, clean-up and properly dispose of all pet waste.

Section 3.6. Fencing/Screening.

(a) After the date this Declaration is recorded, no fence shall be permitted unless written permission is given therefor by the ACCO and the City has issued its fence permit. Where allowed by the City of Fruita Code all fences shall be six-foot (6') tan vinyl fencing with six-inch (6") wide vertical pickets, and 5x5 posts, and constructed in such a manner as to ensure no gaps between the pickets and posts and as to ensure that one cannot view the interior portion of the fenced in area. Each Lot Owner shall maintain each fence on an SF Lot, or on the boundary of an SF Lot, in good order and repair. Any variations must be approved in writing by the ACCO. In determining whether such approval for a variation should be given, the ACCO shall consider if the fence is compatible with the neighborhood and other existing fences. The HOA may adopt fence rules regarding the type, style and height of all fences. Each Lot Owner shall maintain each fence on an SF Lot, or on the boundary of an SF Lot, in good order and repair. Except, that these fence standards are not applicable to any Owner of a Lot that fronts, abuts, or that is otherwise contiguous to the wetlands area as specifically designated on the Plat.

(b) All clotheslines, implements, recreational vehicles, snowmobiles, ATVs, boats, equipment, wood piles, storage piles and areas shall be kept screened by adequate vegetation and/or fencing to conceal them from view from off the SF Lot, as much as possible, as determined by the HOA. No boat, trailer, motor or recreational vehicle of any type, including snow mobiles and ATVs ("vehicles"), shall be stored or permitted on an SF Lot unless completely contained in a garage, fully-enclosed space on the SF lot or screened by a privacy fence, except that temporary storage outside of such areas is allowed for not more than any ten (10) consecutive days, or portions thereof, but in any event such temporary storage shall not occur for more than twenty (20) days in any twelve month period; exceptions lengthening the foregoing time periods of ten (10) days and twenty (20) days will be given upon prior written approval of the Board for such things as trailers, dumpsters, and materials used during remodels, construction, or landscaping projects.

Section 3.7. Home Occupations. No Lot or the improvements situated thereon may be used for commercial purposes of any type whatsoever, excepting for home occupations that are allowed by the City and that are not expressly prohibited by this Declaration. For purposes of this Declaration, "home occupation" shall have the meaning set forth in the City's Zoning and Development Code as amended from time-to-time.

ARTICLE IV
MAINTENANCE / OTHER RULES

Section 4.1. Landscaping/Maintenance.

(a) Except as otherwise provided herein, the maintenance and repair of each SF Lot and all structures thereon shall be the responsibility of the Owner(s) thereof, including but not limited to, landscaping, the interior and exterior of the structures and other improvements constructed thereon, and any fence on the boundary line of an SF Lot (collectively "Improvements").

(b) Each Owner shall landscape, plant, and thereafter maintain, their SF Lot in accordance with landscaping plans therefore approved by the ACCO so that all Improvements and

landscaping is always neat, well maintained and consistent with other SF Lots. In the event the Owner fails to keep and maintain their SF Lot, landscaping and/or Improvements in accordance herewith, the Association may, but shall not have the obligation to:

- (i) cause such repairs or maintenance as may be needed to comply herewith;
- (ii) remove accumulations of trash or debris, and or
- (iii) cut weeds and/or maintain the landscaping and exterior of all structures.

The costs of such Association work, maintenance and repairs shall be assessed to and against the Owner and the respective SF Lot.

(c) The HOA shall maintain and repair the Common Area as a Common Expense of all of the Lots.

(d) Each Owner of a SF Lot, other than Declarant, shall complete the installation and construction of the landscaping plan for the front portion of the SF Lot within twelve (12) months after such Owner takes title to the SF Lot, and shall complete the installation and construction of the remaining portions of the landscaping plan (for example, the backyard or fenced-in portions of the side yard) within twelve (12) months after such Owner is issued a valid Certificate of Occupancy from the City of Fruita. Each SF Lot Owner shall not begin installation of any landscaping until such Owner has obtained the approval of the ACCO as provided herein.

(e) No structures, fences or trees shall be installed or maintained on or within any easement notice of which is recorded with the County Clerk.

Section 4.2. Owner's Negligence. Notwithstanding anything to the contrary contained in this Article, in the event that the need for maintenance or repair of property or improvements owned or controlled by the Association is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest, agent or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or guest, agent or invitee of any Owner, and the amount of the Owner's liability therefore, shall be determined by the Association at a HOA hearing after notice to the Owner. Such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

Section 4.3. Nuisances.

(a) No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed on any Lot or Common Area which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others, or which may constitute a health hazard.

(b) No trash, garbage, ashes, junk, vehicle in disrepair, underbrush or unsightly growth or objects shall be maintained or permitted on any Lot. All outdoor trash, garbage or other waste must be kept in sanitary containers. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition and shall be stored indoor except the day of pickup, except containers used during construction, repair and/or replacement of the residence and other Improvements. There shall be no burning or other disposal of refuse or trash out-of-doors.

(c) No Owner or other person shall emit, or fail to stop from being emitted: any sound on any Lot or Common Area which is unreasonably loud or annoying; any odor which is noxious or offensive to others; any light which is unreasonably bright or causes unreasonable glare. All exterior lights (including streetlights) constructed or installed after the date this Declaration is recorded with the County Clerk, other than those constructed by Declarant and other than ordinary low wattage lights, shall be subject to approval by the ACCO based on harmonious development and prevention of off-site light.

Section 4.4. Construction Completion. The construction, including painting of the exterior, of each residence and other Improvements on an SF Lot shall be completed within twelve (12) months of the date the construction began, except where Acts of God, disaster, or availability or scarcity of materials and supplies beyond an Owner's control prevents completion.

Section 4.5. Signs. No signs, advertising devices or billboards bearing commercial messages shall be displayed within the Property unless written approval therefor is granted by the Declarant or the HOA, as applicable; provided, however, that the Association specifically reserves the right to adopt reasonable, content neutral rules to regulate the number, location, placement, size, or otherwise prohibit signage, flagpoles, symbols, or imagery from being displayed as permitted under Section 38-33.3-106.5, C.R.S. In no event shall a sign be allowed during Declarant's control that identifies a builder, construction contractor or developer other than the Declarant or one hired by the Declarant. The following are permitted for display within the Property in accordance with Section 38-33.3-106.5, C.R.S.: (1) A single "for sale" sign per SF Lot, which shall not be larger than 24" x 24" (and the only message thereon shall either be: the name, address and contact information of the listing real estate company, or if for sale by owner, limited to the words "For Sale By Owner" and the selling owner's telephone number or other contact information); (2) any signs used by Declarant for subdivision advertisement of the Property and/or for any future subdivision and/or development of future SF and/or multi-family lots, and each Lot owned by Declarant; (3) the display of a flag on an Owner's Lot, window, or balcony on a residential structure/improvements on said Lot, except flags bearing commercial messages; (4) the display of a sign by the Owner on a Lot or in the window of the residential structure/improvements on the Lot, except the sign shall not be larger than 24" x 24"; or (5) the display of a religious item or symbol on the entry door or entry door frame of an Owner's residential structure/improvements on the Owner's Lot, so long as the symbol does not violate Section 38-33.3-106.5(c.5)(I)(A)—(E) and (II).

Section 4.6. Antennas. No television, microwave or other antenna, dish or similar device shall be erected or maintained on any SF Lot or structure on an SF Lot which has any dimension larger than twenty-four inches (24"). No tower, antenna or aerial shall be erected or maintained that is higher than fifteen feet (15') above the finished grade of the Lot. "Finished grade" means as defined by the City for determining the height restriction for construction of a new residence on the Lot.

Section 4.7. Hazardous Activities. No activities shall be conducted, nor any Improvements constructed, on any Lot or elsewhere on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing: no firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged upon any Lot or the Property; nor shall open fires be lighted or permitted on any Lot or the Property (including burning of trash or rubbish) except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed fireplace or fire pit.

Section 4.8. Utilities. All utilities, including all lines and/or wires and/or pipes for telephone, electricity, cable, internet, gas, water and sewer, shall be buried and maintained underground from their primary source adjacent to the Lot line to the residence or structure, at the Owner's sole expense.

Irrigation water, including irrigation wastewater, conveyed within irrigation easements shall be allowed only if in underground pipe; no open ditches are allowed.

Section 4.9. Drainage.

(a) Except as approved by the Declarant while exercising its reserved rights to further subdivide and/or develop the Property, or by the ACCO, no modifications or alterations to the grade or soils on any Lot or Common Area shall be made in such manner that will obstruct, divert or otherwise alter the water drainage courses and patterns, nor shall landscaping or changes to the existing terrain be made which would obstruct, divert or otherwise alter such drainage.

(b) No person shall fill in, obstruct or otherwise alter the flow of storm water, run-off or existing and future drainage easements that are created by or shown on any recorded plat of any portion of the Property.

Section 4.10. Mining. No Lot or other portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 4.11. Tanks. No elevated or underground tanks of any kind shall be allowed on the Property.

Section 4.12. Garage Sales. The HOA may adopt regulations governing the frequency of and related rules for garage sales.

Section 4.13. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent construction, installation or maintenance by Declarant, or its duly authorized agents or contractors, of improvements, structures and/or signs necessary or convenient to the development, sale, operation or other disposition of any Lot, Common Area, Outlot or reserved rights owned by Declarant or its assigns.

Section 4.14. Weeds and Tamarisk. Noxious weeds/vegetation, as designated by the City of Fruita or other applicable governmental authority, that are located on a Lot or the Common Area shall be forthwith removed. The HOA has the authority to cause noxious weeds to be removed from a Lot if written notice is first given to the Owner of a Lot and if such owner fails to remove same within said twenty (20) days of mailing or delivery of such notice. Such notice may be delivered by posting the notice on the front door of the residence. If the Owner fails to pay in full within thirty (30) days of the mailing or delivery of notice of the costs incurred by the HOA in dealing with such noxious weeds/vegetation not timely removed by a Lot owner, such costs shall be a special assessment against the particular Lot and a personal obligation of each Owner thereof. The HOA shall have the duty to remove noxious weeds from the Common Area.

Section 4.15. Water Near Foundation. Each Owner shall maintain the ground and grades of, and the landscaping on, a Lot so that water flows away from each residence and other structures and so that water near or under the foundation of all structures is perpetually avoided. Further, each Owner shall maintain the grade on and improvements to the Owner's Lot so that drainage/run-off water does not flow onto any other Lot or adjacent property unless the drainage/run-off water flows in a designated drainage easement.

Section 4.16. Parking. No motor vehicles or vehicles may be parked on an SF Lot except on the driveway, in a garage, or in a screened area as described in § 3.6(b).

ARTICLE V
ASSOCIATION. MEMBERSHIP AND VOTING RIGHTS. INDEMNITY

Section 5.1. Purposes and Powers. The Association shall be a corporation organized pursuant to the Colorado Nonprofit Corporation Act, § 7-20-101, *et seq.*, C.R.S., to be and constitute an entity for the exercise of the powers for the purposes set forth in this Declaration, including the appointment and removal of the Architectural Control Committee (“ACCO”), the management of run-off and storm water, Common Areas, the levy and collection of assessments, the enforcement of the covenants, conditions and restrictions set forth in this Declaration, such rules and regulations as may be adopted by the Board, and to otherwise exercise such other powers as are set forth in this Declaration, or reasonably necessary to fulfill its objectives and purposes.

Section 5.2. Membership. Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each SF Lot shall be entitled to one vote and the Owner or Owners shall exercise the vote of each SF Lot as they determine, however, not more than one vote can be cast with respect to any SF Lot.

Section 5.3. Directors of the Association. The affairs of the Association shall be managed by the Declarant initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 5.4 below, the Board shall be managed by at least three directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

Section 5.4. Management of the Association. From date of formation of the Association until the termination of Declarant’s control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant’s control of the Association shall terminate upon the first to occur of: Sixty days after conveyance of seventy-five percent (75%) of all of the Lots to Owners other than Declarant; Two years after the last conveyance of a Lot by Declarant in the ordinary course of business; or seven (7) years after the first sale of a Lot to an Owner other than Declarant. 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 Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of (50%) of all of the Lots to Owners other than Declarant, at least one member of the members of the Board shall be elected by Owners other than Declarant. Not later than the termination of the period of Declarant’s control as provided above, the Owners (including Declarant) shall elect a Board of three members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon termination of the period of Declarant’s control. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 303(9) of CCIOA, as amended.

Section 5.5. Officers. The officers of this Association shall be as set forth in the Bylaws of the Association.

Section 5.6. Indemnification of Officers and Directors. Neither Declarant, the Association, any member of the Board, any officer of the Association nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action or any failure to act with respect to

any Association related matter if the action taken or failure to act was in good faith and is not finally adjudicated to be willful or intentional misconduct. The Association shall indemnify and hold harmless Declarant and any member of the Board, and any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages, charges, liabilities, obligations, fines, penalties, claims, demands, or judgments and any and all expenses, including, without limitation, attorney's fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person, or of the Association, the Board, or any committee of the Association, provided that such person was acting under the authority of the Association and has acted in good faith and is not finally adjudicated to be guilty of willful or intentional misconduct.

Section 5.7. Limitation of Liability. Neither Declarant nor the Association shall be liable for injury or damage caused by any latent condition of the Property or Lots, by the conduct of other Owners or persons, by casualties for which insurance pursuant to these Declarations is not required, or for which insurance is not provided by the Association.

ARTICLE VI **ARCHITECTURAL CONTROL COMMITTEE**

Section 6.1 Composition of Architectural Control Committee.

(a) The Architectural Control Committee ("ACCO") shall consist of three or more persons appointed by the Board of Directors of the Association; provided, however, that until Declarant no longer has control, as described herein, Declarant shall act as the ACCO. The Board of Directors may serve as the ACCO. A majority of the ACCO may, from time-to-time, designate a representative to act for it. The power of the Declarant to act for the ACCO, as provided herein, shall include without limitation the power to: initially constitute the membership of the ACCO; appoint member(s) to the ACCO upon the occurrence of any vacancy therein, for whatever reason; remove any member of the ACCO, with or without cause, at any time; appoint the successor thereof; and each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time-to-time in the discretion of the Declarant. All improvements within the Property constructed by Declarant, including residences, during the period in which it appoints the ACCO shall be deemed approved by the ACCO without the issuance of any writing evidencing such approval.

(b) The ACCO shall have the right to adopt Architectural Control Guidelines from time-to-time to assist owners in applying for ACCO approval.

(c) When the members of the ACCO do not have the expertise to review a particular application or request before it, it may reject or disapprove the application unless the requesting Owner agrees to pay for engineering, architectural and/or other professional services rendered to the ACCO in conjunction with the request or application. If such an Owner fails to timely pay for such services, the ACCO shall refer the matter and bill(s) to the HOA which may impose a special assessment against the Owner's Lot which shall be a lien against the Lot and an obligation of each such Owner, in accordance with Article VII of this Declaration.

(d) Review and approval by the ACCO does not relieve an Owner from his/her sole responsibility to abide by all of the rules of this Declaration, getting the proper City/County permits, and any rules adopted by the HOA and/or the ACCO. Each Owner, by acceptance of a deed to a Lot, agrees that, notwithstanding any acts or failure to act of the ACCO, the HOA may enforce its rules, the rules of the ACCO, and the provisions of this Declaration, and that the doctrine of estoppel and similar equitable principles shall not limit or bar any such HOA actions.

Section 6.2. ACCO Prior Approval. No structures, buildings or other Improvements of any kind, including without limitation driveways leading to the various structures within the Property, shall be constructed, remodeled or altered in any fashion within the Property, nor may any vegetation be altered or destroyed nor any landscaping performed, unless two (2) complete sets of proposed plans and specifications for such construction or alteration or landscaping are submitted to and approved by the ACCO prior to the commencement of such work.

Section 6.3 Approval Process.

(a) All applications/plans shall be submitted to the ACCO in writing and in duplicate, duplication is not necessary if application and plans are submitted electronically.

(b) The ACCO shall approve or disapprove in writing all plans and requests within thirty (30) days after receipt by the ACCO of documentation as described in section 6.4. In the event the ACCO fails to take any action within thirty (30) days after a request has been received, approval will not be required and the provisions of this Article will be deemed to have been met, except as provided in Section 6.4.

(c) A majority vote of the ACCO is required for approval or disapproval of proposed improvements or other work.

(d) The ACCO shall permanently maintain written records of all applications submitted to it and all actions it may have taken.

(e) The ACCO may adopt rules and regulations for processing of such applications, including reasonable fees to process, renew and store such applications.

(f) If the ACCO deems it necessary, it may condition its review and/or approval of any application or Owner request by the Owner agreeing to pay for such professional services as the ACCO requires. Also see section 6.1(c) hereof.

Section 6.4. Submission of Plans to ACCO. Plans and specifications submitted to the ACCO shall show the nature, kind, shape, height, materials, floor plans, location, exterior color scheme, alterations, grading, drainage, erosion control and all other matters necessary for the ACCO to properly consider and make a determination thereon. Submittals shall include a minimum of:

(a) Site plan showing property boundaries, setbacks, building envelope, principal and accessory buildings, driveway location and width, surface drainage and fencing;

(b) Building elevations (all sides) and floor plans;

(c) For each residence, engineered foundation plans by a Colorado licensed professional engineer if required by the City of Fruita;

(d) Samples of roof and external materials along with field trim and accent colors for principal and accessory buildings and all other structures;

(e) Landscape plans shall include plant quantity and types, fencing, drainage, irrigation and other site improvements; and

(f) Professional services deemed necessary by the ACCO, as provided in §§ 6.1 and 6.3 hereof.

The ACCO shall disapprove any plans and specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Declaration. If the ACCO requires extra time to review any submitted plans, it may so inform the applicant and it shall state in such notice the date by which a decision shall be made, within thirty (30) days of the notice.

Section 6.5. ACCO Variance. Where circumstances such as topography, location of trees, brush, rock, outcroppings, area aesthetic considerations, or other matters require or allow, the ACCO may allow reasonable variances as to any of these covenants, including required sizes of structures, setback of side yard requirements, on such terms and conditions as it shall require. Adjoining property owners shall have the opportunity to provide input before any such decision is made. All such decisions shall be in writing and shall be kept as a permanent record.

Section 6.6. ACCO Best Judgment. The ACCO shall exercise its best judgment to see that all improvements, structures, landscaping and all alterations on the Lots and Common Areas conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siding, height, topography, grade, drainage, erosion control and finished ground elevations.

Section 6.7. ACCO Time. After approval of any plans by the ACCO, the work described shall be completed with due diligence in conformity with conditions of approval, if any, but in any event within twelve (12) months. Failure to adhere to any term of approval shall operate automatically to revoke the approval, and the ACCO may require the property to be restored as nearly as possible to its previous state. The time for completion of any such work may be extended by the ACCO.

Section 6.8. ACCO Liability. The ACCO, the Declarant, or any Owner shall not be liable in damages to any person, corporation, or association submitting any plans and specifications by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and specifications. Any Owner submitting or causing to be submitted any plans and specifications to the ACCO hereby agrees and covenants that he will not bring any action or suit to recover damages against the ACCO, the Declarant or any Owner collectively, its members individually or its advisors, employees or agents, and that such Owner releases ACCO, the Declarant or any other Owner from any such claims or actions.

Section 6.9. ACCO Vote and Appeal. A majority vote of the ACCO is required to approve a request pursuant to this Article. Within thirty (30) days of a decision, any Owner may appeal the decision of the ACCO to the Board of Directors if the Board is composed of different members than the ACCO, and, in such event, the decision of the Board shall be final.

Section 6.10. ACCO Violation. Upon violation of any of the conditions contained in this Declaration by any Owner, or by any renter, invitee, guest or family member of any Owner, the Board shall have the following power: The Board shall notify the Owner in writing of the specific violation and shall set a time in the notice when the Owner may appear before the Board to review the facts of the violation. Within twenty (20) days after such hearing, the Board shall enter its decision and shall notify the Owner in writing. Included in the decision will be a statement by the Board on what action must be taken by the Owner to correct the violation and a time period for completion of the remedial action. If the Owner does not complete the remedial action as set forth in the decision, then the Board may commence legal proceedings in a court in Mesa County with jurisdiction, seeking damages and/or specific performance of the covenants in this Declaration. The prevailing party may recover all costs and attorney fees incurred in any such proceeding.

ARTICLE VII
ASSESSMENTS

Section 7.1. Creation of the Lien and Personal Obligation of Assessments.

(a) Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for Association Expenses, and (2) special assessments for Association Expenses and, as such be required from time-to-time, for Common Area maintenance and improvements, to be established and collected as hereinafter provided. The annual and/or special assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time-to-time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction.

(b) The Declarant is not liable for HOA maintenance expenses unless Declarant builds on a Lot and occupies the Residence or Rents the residence. However, it will be the responsibility of Declarant to maintain any unsold, vacant lots and mitigate any weeds on such Lots.

(c) The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property or otherwise if an alternative is legally available. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded with the County Clerk. 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 a part thereof.

(d) Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal, joint and several, obligation of each person(s) who was the Owner of such Lot at the time when the assessment became due.

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

Section 7.2. Purpose of Assessment. Until changed pursuant to the Act, the annual assessment for each SF lot shall be \$250.00 per year. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the Property and, to the extent not performed by any applicable government entity, for the maintenance of the Common Areas.

Section 7.3. Rate of Assessment. Annual assessments shall be fixed at a uniform rate for all Lots and shall be allocated to each Lot on the basis of a fractional share per Lot, the numerator of which fraction shall be one and the denominator of which shall be the number of Lots subject to the provisions

of this Declaration, and shall be in the amount sufficient to meet the expected needs of the Association and to pay the Association Expenses. Also see, §7.2.

Section 7.4. Budget. At least thirty (30) days prior to the Association's fiscal year end, the Board shall estimate the cost and expenses to be incurred by the Association during the coming fiscal year in performing its functions pursuant to the Declaration. The sum or net estimate so determined shall be assessed to the Owners as an operation and maintenance assessment by dividing the total estimate, less any cash reserves (which does not include Capital Reserves) by the total number of residential Lots and assessing the resulting amount to the Owner of each Lot. Owners will have a chance to vote on the budget at the Association's Annual Meeting.

Section 7.5. Date of Commencement of Annual Assessments. The initial annual assessment shall commence on the first day of September 01, 2023, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association beginning September 01, 202___. The annual assessments shall be due and payable in one (1) annual installment due on the 15th day of January each year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due. At the time of purchase of each SF Lot from Declarant, each such SF Lot Owner shall, in addition to annual and special assessments, pay a one-time \$300.00 capital investment fee to the HOA.

Section 7.6. Reserve Accounts. As a part of the Association Expenses, the Association shall have the right to maintain adequate reserve fund accounts out of the annual assessments for the repair and replacement of those elements of Association property that must be repaired or replaced on a periodic basis.

Section 7.7. Special Assessments. If at any time during any fiscal year the regular assessment proves inadequate for any reason, including non-payment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy but only after the Board has given thirty (30) days written notice to the Members. Such written notice shall include a rationale for the proposed special assessment, and shall include an analysis of how the adopted budget was insufficient. If the Board receives written notice of objection from, or a request that the special assessment be voted upon by, at least twenty percent (20%) of the Owners, the Board shall not impose the special assessment until a majority of the Owners voting at the meeting held for such purpose have voted in favor of the special assessment. Such special assessment shall be assessed to the Owners by dividing the assessment by the total number of Lots subject to the provisions of this Declaration, unless the special assessment should be assessed to fewer than all of the Lots, and assessing the resulting amount to the Owner(s) of such Lot(s), such assessment to be paid in installments or a lump sum as the Board shall determine.

Section 7.8. Effect of Nonpayment of Assessments: Remedies of the Association. In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

(a) Any assessment not paid within thirty days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time-to-time by the Association, and the Association may also assess a monthly late charge thereon.

(b) The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and in the event a judgment

is obtained, such judgment shall include interest on the assessment, reasonable experts and/or attorney's fees to be fixed by the court, together with the costs of the action.

(c) The Association may refuse to provide services or benefits to any Owner's Lot whose assessment is delinquent.

(d) The Association may suspend the voting rights of any Owner for the period during which any assessment against the Owner's Lot remains unpaid.

(e) The Association may prevent the use of any Common Area by any Owner whose assessment is delinquent.

(f) No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse or abandonment of his or her Lot or by non-use or abandonment of the Common Area.

Section 7.9. Lien for Assessments.

(a) Under the CCIOA, the Association has a statutory lien on a Lot for any assessments levied against that Lot and for fines imposed against its Owner, from the time each assessment or fine becomes due. In addition, fees, charges, late charges, attorney's fees, fines and interest charged pursuant to this Declaration or the CCIOA, are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) The statutory lien for assessments is prior to all other liens and encumbrances on the Lot except:

(i) liens and encumbrances recorded before the recordation of this Declaration;

(ii) a lien of a First Mortgage which was recorded before the date on which the assessment sought to be enforced became delinquent; and

(iii) 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 which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action to enforce the statutory lien.

(c) The recording of this Declaration with the County Clerk constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or assessment is required, however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner's Lot.

Section 7.10. Budget Adoption and Expenditures. Once the Declarant no longer has control of the Association, the following shall apply:

(a) An annual budget shall be prepared by the Board of the HOA and delivered by U.S. mail or by posting on a Lot to each Owner or as otherwise allowed by CCIOA. The Board of the HOA shall schedule a meeting before the end of April in each calendar year for action on the budget by

the Owners in attendance or by proxy. Unless a majority of the Owners in attendance or by proxy vote to veto the budget and/or other items presented at the meeting that are of importance to the HOA, the budget for the HOA and/or other items shall be as proposed by the Board.

(b) The Board of the HOA may similarly propose a reserve or future capital expenditures account as a part of the budget.

(c) The Board shall include in its proposed budget how the funds for any reserves shall be raised: by special assessments or annual assessments.

(d) The Board shall, either through the efforts of its Members or by engaging professional services, keep current and accurate records of all income and expenditures, and shall at least once a year mail or deliver to each Owner a report showing all such income and expenditures and a summary analysis indicating whether or not the HOA spending is within the approved budget. The Board is prohibited from spending more than is authorized by the approved budget.

(e) A Member or Owner shall have the right to inspect, and copy at such Member or Owner's expense, all or any of the records of the HOA upon five (5) days' notice of such request, except as otherwise provided by law.

Section 7.11. Spending of the Assessments. The Board shall:

(a) Maintain any irrigation system and all Common Areas, in a neat, clean and high-quality state, so as to promote an aesthetic and pleasing appearance.

(b) Pay for liability insurance regarding all Common Areas, and other insurance, such as errors and omissions insurance for the HOA and its officers and board members, as the Board deems appropriate from time-to-time.

(c) Maintain and protect Tract C as a designated wetland area in accordance with local, state, and federal law or as otherwise required.

ARTICLE VIII
INSURANCE

Section 8.1. Insurance. The Association may maintain such forms and amounts of insurance as an Association Expense covering such risks as the HOA deems necessary or as required by law.

ARTICLE IX
DISPUTE RESOLUTION

Section 9.1. Dispute Resolution.

(a) In the event of any dispute involving the Association and a Member, the Member is invited and encouraged to meet with the Board of Directors to resolve the dispute informally and without the need for litigation. If the Member requests a meeting with the Board, the Board shall make a reasonable effort to comply with the Member's request. Nothing in this section shall be construed to require any specific form of alternative dispute resolution, such as mediation or arbitration, or require the parties to meet. Neither the Association nor the Member waives any right to pursue whatever legal or other remedial actions are available to either party.

(b) 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; provided, however, that the parties shall first proceed in good faith to submit the matter to mediation. The mediator cannot impose a binding decision. The parties to the dispute must agree before any settlement is binding. Within fourteen (14) days after one party notifies the other of a dispute, the parties shall jointly appoint an acceptable professional mediator. If the parties cannot agree on a mediator, each party shall select a professional mediator whose sole purpose shall be to select a third professional mediator who shall mediate the dispute. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty (30) days after the date the mediator is selected. If the dispute is settled through the mediator, the parties shall share equally in the mediation costs and shall pay their own attorney fees, if any. If the dispute 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.

ARTICLE X **SPECIAL DECLARANT'S RIGHTS**

Section 10.1. Easements. Easements for installation and maintenance of utilities, drainage facilities, and irrigation water are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow, obstruct or retard the flow of water in and through drainage channels in the easements. The easement area of each Lot and Improvements in it shall be maintained continuously by the Owner of the Lot, except those Improvements for which a public authority or one (1) or more utility company(ies) is responsible.

Section 10.2. Construction Easement. Declarant expressly reserves the right to perform warranty work and repairs and construction work and to store materials in secure areas, on Lots and Common Elements, and the future right to control such and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Owner or mortgagee. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated as reserved for future development in the Declaration or on the map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the Property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an improvement containing Lots. If Declarant grants any such easements, the Declaration will be amended to include reference to the recorded easement.

Section 10.3. Termination of Special Declarant Rights. The Special Declarant's Rights so reserved to Declarant, for itself, its successor and assigns, shall expire ten (10) years from the date of recording this Declaration, unless the Special Declarants Rights are (i) extended as allowed by law, or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of such rights by Declarant.

Section 10.4 Transfer of Special Declarant's Rights. Any Special Declarant's Right created or reserved under this Article for the benefit of Declarant may be transferred to any person by an

instrument describing the rights transferred and recorded in every country in which any portion of the project is located. Such instrument shall be executed by the transfer Declarant and the transferee.

ARTICLE XI **GENERAL PROVISIONS**

Section 11.1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons, including without limitation the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of the aforesaid documents in any action instituted or maintained under this section. The prevailing party shall be entitled to recover its costs and reasonable attorney's fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.2. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 11.3. Easements. Easements are reserved as shown on the recorded plat of the Subdivision, or any portion thereof, or other duly recorded instrument(s). Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or the use of the easements, or which may change the direction of flow of drainage channels in the easements. Declarant and the HOA hereby reserve the right to enter upon the Property and each Lot to correct any flow of water and to establish and re-establish drainage channels.

Section 11.4. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 11.5. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns for access, ingress and egress over, in, upon, under, and across any Lot and/or Common Area, including but not limited to the right to store material thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or its designee's construction on or development of the Property and any Lot; provided however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns hereby retains a right to store construction materials on Lots owned by Declarant and to make such other use thereof as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations hereunder, and the sale of any Lot. Any special Declarant rights created or reserved under this Article or elsewhere in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded with the County Clerk.

Section 11.6. Easement for Encroachments. If any portion of a structure existing as of the date hereof encroaches upon any Common Area or upon any adjoining Lot, or if any portion of any Common Area encroaches upon any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 11.7. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association. All notices or demands intended to be served upon an Owner may be sent by U.S. mail, postage prepaid, addressed in the name of the Owner at such registered mailing address, or by posting such notice on the front door of the residence located on a Lot. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be sent to such Owner at the address of such Owner’s Lot. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to: c/o Berg Owners Association, Inc., 1380 North Avenue, Grand Junction, Colorado 81501, until such address is changed by the Association.

Section 11.8. Liens Not Impaired. No violation or breach of this Declaration, or any enforcement action shall impair the lien of any mortgage, deed of trust or other lien created in good faith and for value prior to recording of a *lis pendens* or other document by a plaintiff alleging violation or breach.

Section 11.9. Good Faith. Neither the Declarant, the HOA, the ACCO, nor any member, agent nor employee thereof shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

Section 11.10. Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provisions or any valid and enforceable part of a provision of this Declaration.

Section 11.11. Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

Section 11.12. No Waiver. Failure to enforce any provision, of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration. shall be sent by certified mail, postage prepaid to: c/o Berg Owners’ Association, Inc., 1380 North Avenue, Grand Junction, Colorado 81501, until such address is changed by the Association.

DECLARANT:

By: _____
Willie Berg

By: _____
Neomi M. Berg

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Willie Berg and Neomi M. Berg.

Witness my hand and official seal.
My commission expires:

Notary Public