

**DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR GEAR ESTATES SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (“Declaration”) is made and entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_, by Gear Estates Homeowner’s Association, Inc., hereinafter referred to as (“Declarant”).

**RECITALS**

NOW, THEREFORE, Declarant hereby declares that the property described on the attached **Exhibit B**, subdivided as Gear Estates, a subdivision of the City of Fruita, hereinafter “Property” or “Subdivision”, except as provided in the following paragraph, shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and lots therein, and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1.1 “Architectural Control Committee” or “ACC” shall mean the building and design committee appointed by Declarant until Declarant no longer has control as described in §5.4, and thereafter by the Board of Directors of the HOA, for the control of architectural style and construction within the Property.

Section 1.2 “Association” or “HOA” shall mean and refer to Gear Estate Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 1.3 “Association Expenses” shall mean each 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), and the *pro rata* share of Gear Estate Subdivision HOA expenses, the other structures, appurtenances and improvements to the Property, 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 water, domestic water supplied by Ute Water and 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 herein

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 easement(s) as shown on the final plat of Gear Estate Subdivision, and includes all drainage and irrigation easements created by Gear Estate Subdivision Final Plat.

Section 1.8 "Common Expenses" means all expenses 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 and the common expenses of Gear Estate Subdivision HOA.

Section 1.9 "Completion of Construction" shall mean the earlier of the receipt of a certificate of occupancy from the local building authority for a structure on the Property or completion of the work as described on a plan or plans as approved by the ACC.

Section 1.10 "Dwelling" or "Residence" shall mean and refer to any residential improvement constructed within the Property, including accessory buildings.

Section 1.11 "Declarant" shall mean and refer to Gear Estate Homeowner's Association Inc, its 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 1.12 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, as the same may be amended from time to time.

Section 1.13 "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 HOA assessments).

Section 1.14 "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 1.15 "Lot" shall mean and refer to any separate numbered lot or tract shown upon any recorded subdivision map of the Property or any portion thereof, as the same may be amended from time to time, together with all appurtenances and improvements now or hereafter.

Section 1.16 “Member” shall mean and refer to each Owner of a Lot that is subject to this Declaration. Membership in the Association shall be appurtenant to, and may not be separated from ownership of a Lot and shall mean Membership in the Gear Estate Subdivision HOA.

Section 1.17 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, 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 1.18 “Property” or “Properties” shall mean and refer to that certain real property described in this Declaration, namely the Lots created by Gear Estate Subdivision with the exception of City of Fruita dedicated rights-of-way and Lot 1.

Section 1.19 “Subdivision” shall refer to Gear Estate Subdivision.

Section 1.20 “Start of Construction” shall mean the earlier of the application for a building permit with the local building authority, the excavation on any Lot, or the start of landscaping on any Lot.

Section 1.21 Terms not defined herein shall have the meaning defined in the City’s of Fruita (“City”) Development Code, or if not defined therein, as defined in the ordinances of the City of Fruita, 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, including the Lots in Gear Estate Subdivision, does hereby subject all Lots, Common Area and the Property to the provisions of this Declaration with the exception as described under Section 1.18.

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 , 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.

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 the Association's adopted rules and regulations, but only once the infraction has been established by the Association.

(c) The right of the Association to close or limit the use of the Common Area, including easements, while maintaining, repairing or making replacements thereto.

(d) Time sharing of a Lot or structures on a Lot is not permitted. Any lease agreements between an Owner and a lessee for a Lot and/or residence shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and that any failure by the lessee to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing. Each Owner is obligated to notify the HOA within ten (10) business days of the name and contact information of each such lessee.

Section 2.5 Common Area. The Association shall have all rights of ownership and shall be responsible for the maintenance of the Common Area.

Section 2.6 Easements. The Property, Lots and Common Area shall be subject to:

(a) Drainage Easements. Non-exclusive easements in, under, over, across, through and upon the Property, Lots and Common Area, for the purpose of installing, maintaining, repairing and placing drainage utilities such as piping and drain inlets or other public purposes consistent with the intended use of the Property;

(b) Irrigation Easement. A non-exclusive easement hereby granted to the owner of Lot 1 upon, across, over, and under the Common Area and any Lot as may be necessary or appropriate to perform installing, maintaining, and repairing irrigation utilities such as piping, valves, cleanouts or other items consistent with the intended use of the utility;

Section 2.7 Easements Run With the Title. Each conveyance of any Lot shall be construed to grant and reserve the easements contained in this Article II, even though no specific reference to such easements or to this Article II appears in the instrument of conveyance.

### ARTICLE III

## ALLOWED USES

### Section 3.1 General.

(a) The current plan, which may be changed when the final plat is recorded, is for eight (8) single family lots in which four (4) shall be attached single family and four (4) shall be detached single family. All of said Lots of the Association shall be used only for residential purposes. No structure other than one single family residence per Lot shall be constructed or permitted on a Lot. Accessory structures or out-buildings are not allowed. Every residence shall have a private garage for no less than two vehicles. Every driveway shall be a maximum of twenty feet (20') wide and shall be constructed and maintained as a concrete paved surface and shall be large enough to park two vehicles thereon.

(b) The structures and grounds of each Lot shall be maintained in a neat and attractive manner by the Owner(s) thereof.

(c) The work of constructing, altering or remodeling any building on any part of any Lot shall be pursued diligently from the commencement thereof until the completion thereof.

Section 3.2 Temporary, Modular Structures. No temporary house, trailer, tent, garage, or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions herein set forth; provided, however, that during the actual construction or alteration of a building on any Lot, necessary temporary buildings for storage of materials may be erected and maintained by the person doing such work. In addition, no trailer, tent, motor home, mobile home or any temporary structure shall be occupied as a residence in any manner at any time while on the Property.

Section. 3.3 Miscellaneous Structures. No advertising, billboards or signs of any character shall be erected, placed, permitted or maintained on any Lot unless prior written consent of the ACC has first been obtained.

(a) "For sale" or "for lease" signs that apply to a residence on a Lot are permitted without the approval of the ACC. Such signs must be removed within 10 days after a transfer of ownership occurs. "Sold" signs are not permitted longer than 10 days after title has transferred.

(b) All signs must be free standing and cannot be placed on any wall, fence, building, tree, bush or other structure.

(c) Declarant is permitted to erect and maintain customary sales and development signage.

(d) A general building contractor constructing a new residence on a Lot is permitted one sign no larger than 20 square feet in sign area. The general contractor can permit sub-contractors or suppliers to use space with the 20 square foot area. No separate sub-contractor or supplier signs are permitted.

(e) Signs of contractors or suppliers doing maintenance or repair work in the Subdivision are not permitted to place signs on any Lot, right of way or Common Area.

(f) Section 38-33.3-106.5, C.R.S., limits the HOA regarding: (i) the display of the American flag; (ii) the display of a service flag bearing a star denoting the service of the Owner or occupant of a Lot or of a member of the Owner's or occupant's immediate family; and (iii) the display of certain political signs. Political signs shall not be displayed within or on the Property earlier than forty-five (45) days prior to the day of an election and shall be removed with seven (7) days after an election day. The HOA may regulate the size and number of political signs, in accordance with section 38-33.3-106.5(c)(II), C.R.S.

Section 3.4 Living Area. The total finished living area of any single-story residence, exclusive of one-story open porches and garages shall be not less than 1,400 square feet, outside measurement. In the case of a two-story dwelling, the lower ground level shall be at least 1,000 square feet, outside measurement. The square footage shall be determined by using outside measurements for finished living area totally above ground, such that basements, garages, porches and patios shall be excluded.

Section 3.5 Height Restrictions. Building heights are measured from the building corner with the highest natural grade to the top of the highest ridge line or top of the highest parapet. Natural grade means the grade of the Lot after roads, utilities and rough grades are completed by the Declarant, but before any Owner or other person makes any modifications to the grade of the Lot. No structure shall be erected or maintained on any Lot which is higher than twenty-eight feet. Height shall be the vertical distance of the structure measured from the lowest point of a finished grade on the Lot within two (2) feet of the structure to the uppermost point of the structure. Chimneys, if allowed, shall be excluded in determining the height of a structure. Lots shall be limited to two living levels above the natural grade of the Lot, exclusive of basements.

Section 3.6 Building Material.

(a) The outside facade of each exterior surface of each structure constructed after the date of recordation hereof shall be constructed of and maintained primarily with stucco, stone, brick and/or select siding. No structure or any portion or element thereof shall be constructed or replaced without the prior written approval of the ACC.

(b) As approved by the ACC, roofs on all structures that are pitched shall have a minimum pitch of 6:12. Gable, hip and flat roofs are allowed when approved by the ACC and meet all applicable building codes. Roofs shall be covered with asphalt architectural shingles. Metal roofs are permitted when reviewed and approved by the ACC.

(c) Exterior paints colors shall be reviewed and approved by the ACC. Several colors are permitted and include earth tone shades, white, shades of gray, shades of blue, shades of green, shades of yellow, ivory, and taupe. Colors of front doors shall be reviewed and approved by the ACC. Secondary exterior materials such as metals (cooper, steel, iron, bronze and similar appearance metals) and natural or faux timber may be used as trim, accents, weather protection features, ornamentations when non-reflective and compatible with the overall home design.

Section 3.7 Pets-Animals. No cattle, sheep, goats, pigs, rabbits, poultry, or other animals of any description shall be kept or maintained on any Lot, except for certified service animals (proof of which shall be provided to the HOA upon request) except that Owners may keep not more than a total of two (2) dogs, cats or other domestic animals which are bona fide household pets so long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of the Subdivision, are kept in compliance with all existing applicable local ordinances and do not weigh more than sixty-five pounds (65 lbs) each. No horses shall be kept or maintained on any Lot. Any dog run or kennel shall be in the rear yard only, and shall not be constructed or installed without the prior approval of the ACC.

Section 3.8 Fencing/Screening.

(a) After the date this Declaration is recorded, no fence shall be permitted unless written

permission is given therefor by the ACC, the City has issued a fence permit and the fence complies with the standards shown on **Exhibit A, "Fencing and Landscape Exhibit"** which exhibit is part of the plans approved by the City during the City review process of Gear Estate Subdivision. Declarant, or Declarant's assigns (developer) shall install a seventy-two inch (72") high vinyl fence (or approved equal) along the all exterior boundaries of the development Gear Estates.

The ACC shall approve a fence request of an Owner if the proposed fence is located as shown on Exhibit A; Owners' fences shall either be forty-two inches (42") or six feet (6') high, limited to the locations shown on Exhibit A and constructed of the same color and style as the fencing installed by Declarant (as noted on Exhibit A).

(b) Each Lot Owner shall maintain each fence on a Lot, whether installed by the Declarant or the Lot Owner, in good order and repair and consistent with the fence originally installed along the majority of the perimeter of the Property.

(d) The HOA has the power, but not the duty, to maintain any fence if the Owner fails to do so after the giving of 30 days notice to the Owner. If the HOA maintains a fence after the Owner fails to timely do so, the costs of such repair and/or maintenance shall be assessed against the Owner's lot.

(e) No clothes lines, drying yards, service yards or storage areas shall be located on any Lot so as to be visible from a street or road within the Property or from the first floor of any adjacent residence on a Lot.

Section 3.9 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 this Declaration, however, notwithstanding any City rule, no "day care," "bed and breakfast" or functionally similar uses are allowed. For purposes of this Declaration, home occupation shall have the meaning set forth in the City's Land Use Code as of the date hereof.

#### **ARTICLE IV MAINTENANCE. OTHER RULES and DUTIES.**

##### Section 4.1 Completion of Landscaping.

- (a) Front & Side Yard Landscaping: Each Owner shall complete the landscaping of their front & side yard(s), in accordance with **Exhibit A, "Fencing and Landscape Exhibit,"** within four (4) months of completion of construction of the residence thereon, or, if weather conditions then prohibit such installation, as approved by the ACC. If any Owner fails to timely complete the landscaping of a Lot as aforesaid, the HOA may, at its option, after giving the Owner thirty (30) days' prior written notice (unless within said thirty (30) day period the Owner of the Lot shall proceed and thereafter pursue with diligence the completion of such landscaping) undertake and complete the Landscaping of the Lot in accordance with the approved landscaping plan, or in the absence of a landscape plan, based upon a plan prepared or engaged by the ACC. The ACC shall determine an acceptable level of initial completion in the event an Owner wants to phase the landscape plan.
- (b) Rear Yard Landscaping: Each Owner shall complete the landscaping of their rear yard, in accordance with plans approved by the ACC within eight (8) months of completion of construction of the residence thereon, or, if weather conditions then prohibit such installation, as approved by the ACC. If any Owner fails to timely complete the landscaping of a Lot as

aforesaid, the HOA may, at its option, after giving the Owner thirty (30) days' prior written notice (unless within said thirty (30) day period the Owner of the Lot shall proceed and thereafter pursue with diligence the completion of such landscaping) undertake and complete the Landscaping of the Lot in accordance with the approved landscaping plan, or in the absence of a landscape plan, based upon a plan prepared or engaged by the ACC. The ACC shall determine an acceptable level of initial completion in the event an Owner wants to phase the landscape plan.

Section 4.2 Landscaping Maintenance.

(a) Except as otherwise provided herein, the maintenance and repair of each Lot and all improvements 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 (collectively "Improvements").

- (b) Landscaping. In order to receive approval of the ACC, Owner Landscape plans must:
- (i) Minimize disruption of the natural terrain by grading;
  - (ii) Provide for vegetation and restoration of ground cover disturbed by grading;
  - (iii) Use only those man-made elements that blend with, or complement the natural landscape;
  - (iv) Use existing or natural drainage paths whenever possible;
  - (v) Provide for adequate snow storage and control of surface runoff;
  - (vi) Conserve and protect topsoil, vegetation, rock formations and unique landscape features;
  - (vii) Comply with Exhibit A "Fencing and Landscape Exhibit".
  - (viii) Provide landscaping water from the domestic water supply.

(d) In the event the Owner fails to keep and maintain the Lot, landscaping and/or Improvements in accordance herewith, the HOA may, but shall not have the obligation to, cause such repairs or maintenance as may be needed to comply herewith, and the HOA may remove accumulations of trash or debris from a Lot, and cut weeds and/or otherwise maintain the landscaping and exterior of all structures. The costs incurred by the HOA in such work, maintenance and repairs shall be assessed to and against the Owner and the respective Lot.

(e) The ACC 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 ACC 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, but in any event within thirty (30) days of the notice.

Section 4.3 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 HOA 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 HOA 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 therefor, shall be determined by

the Board of Directors of HOA at a Board of Director's meeting, after notice to the Owner and after the Owner has been given an opportunity to dispute any potential finding of negligence or willful act or omission. 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 4.4 Nuisances.

(a) No noxious or offensive activity shall be carried on upon the Property nor shall anything be done or placed on any of the Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to the other Owners or to the HOA, as determined by the Board of Directors.

(b) No garbage, refuse, rubbish or cuttings shall be deposited on any street nor on any Lot, unless placed in a suitable container suitably located in a manner concealed from view from a Subdivision street or road, except during 24 hours before and after the scheduled pick-up times. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. Trash containers used during construction are excepted from this subsection (b).

(c) The Association shall have the right to:

- (i) select a single trash collection contractor for the entire community;
- (ii) limit the number of collection vehicle traffic; and

(d) No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot or in any dwelling which is unreasonably loud or annoying; and no odor shall be emitted on any Lot or dwelling which is noxious or offensive to others. Outside lights shall be constructed so that the light emitting therefrom is down casted only.

Section 4.5 Construction Completion. Completion of Construction of a residence must occur within nine (9) months of the Start of Construction unless an extension of time is granted by the ACC.

Section 4.6 Antennas/Swamp Coolers/Air Conditioners.

(a) No television, microwave or other antenna, dish or similar device shall be erected or maintained on any Lot or structure which has any dimension larger than twenty inches (20"). 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.

(b) Swamp coolers shall be located below the ridge line of the home and approved by the ACC.

(c) Air Conditions (Central Air) units shall be installed along the side of the homes on an adequate concrete pad. Location of A/C units shall be considered to minimize noise to adjacent homes and to maintain access along the side yards.

Section 4.7 Hazardous Activities. No activities shall be conducted on the Property or on improvements constructed 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 shall be discharged upon or from any of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designated fireplace or fire pit.

Section 4.8 Utilities.

(a) All electric, television, radio, telephone and other utility line installations and connections from the Owner's Lot line to a residence shall be buried underground, except that during the construction of a residence, the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

(b) Each residence shall connect with the water and sanitation facilities provided by the appropriate governmental or quasi-governmental entity, and no private wells or private sewage systems shall be allowed on the Property.

Section 4.9 Drainage.

(a) Except as approved by the ACC, 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 tanks of any kind, elevated or buried, shall be erected, placed or permitted upon any Lot without the prior written approval of the ACC.

Section 4.12 Garage Sales. The HOA may designate two or more, weekends each calendar year for the Lot Owners and residents to hold garage sales on Lots. Garage sales shall not be allowed except on the dates set by the HOA.

Section 4.13 Weeds. 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 remove same within thirty (30) 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 which were 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 4.14 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 his/her 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 drainage easement designated on the final plat of the Subdivision or by the Board of Directors.

Section 4.15 Restrictions on Parking and Storage.

(a) No Lot, streets, drives or parking areas, unless specifically designated by the HOA or on the plat of Gear Estate Subdivision, shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, snowmobile, boat trailer, hauling trailer, boat or accessories hereto, truck larger than a one (1) ton pick-up truck, or any type of motor home except as a temporary expedience for loading, delivery, emergency, *etc.*, unless the same shall be stored, parked or maintained wholly within a garage area of a dwelling with the garage door in a closed position during the night time hours or when the residents of the dwelling are not present. Trucks or other commercial vehicles and equipment which are necessary for the construction of residences, Improvements or maintenance of the Common Area are excepted from this section (a).

(b) At no time shall any vehicle parking be permitted on a Lot other than on a paved driveway that has been approved by the ACC, except during times of, and in connection with normal Lot maintenance or construction except that Owners may park an RV or motor home on a public street in front (or as close thereto as is reasonably possible) of their residence for no more than ten (10) days or partial days per calendar year.

(c) Goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business shall not be kept or stored on any Lot, excepting the right of any homebuilder and the Declarant to store construction equipment and materials on said Lots while Construction is actively in process. The ACC can require such construction materials, equipment and supplies to be removed from the Lots if, in its sole opinion, it is creating a nuisance to the neighborhood or construction is not progressing as quickly as is reasonable.

Section 4.16 Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, or servicing of any personal property, including vehicles, may be performed on any Lot unless it is done within completely enclosed garages located on the Lot which screen the sight and sound of the activity from the streets of the Subdivision. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer or motor driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 4.17 Trees. Shrubs. Trees and shrubs planted within easements shall maintain a minimum 6-foot separation from any and all underground utility line and/or pipe. No tree or shrub shall be planted in any side yard.

Section 4.18 Vehicles in Disrepair. No Owner shall permit any inoperable or junk vehicle to be abandoned or to remain parked upon any Lot or on any street for a period of time in excess of forty-eight (48) hours. A vehicle shall be deemed to be inoperable unless it has current registration and license plates and is in operable condition able to be legally operated on a public street.

Section 4.19 Wood Piles. No wood piles, for fireplaces or other uses, may be stored out of doors where they may be visible from any street within the Subdivision.

Section 4.20 Wildlife. No hunting, shooting, trapping or otherwise killing or harming of wildlife shall be permitted on the Property.

Section 4.21 Plant Diseases and Insects. No Owner shall permit anything or condition to exist upon his Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 4.22 Basements/Foundations. Basements are permitted. Engineered foundations are required on all Lots.

Section 4.23 Shade and Recreational Structures. Pools and shade shelters, such as gazebos, must be approved by the ACC and may be located within the buildable area of the Lot. These structures must be architecturally related to the dwelling. Metal sheds are prohibited. Swing sets and similar play structures are allowed only in the rear yards as defined by the City, and are not subject to review by the ACC.

Section 4.24 Garage Doors. Garage bays for three vehicles is the maximum permitted and for garage doors facing the street the maximum width of such doors is twenty feet (20').

Section 4.25 Exterior Maintenance. Except as otherwise provided herein, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed hereon, and the interior of any fence on the boundary line of a Common Area and a Lot shall be the responsibility of the Owner(s) thereof.

Section 4.26 Owner Maintenance Area. Each Owner shall maintain the patio, lawn and garden area within their Lot and adjacent to their Residence. The Association shall have the right to promulgate reasonable rules and regulations regarding such maintenance.

Section 4.27 Owner Maintenance of Shared Driveways. Wherever Owners shall share a common private driveway, each Owner, including Declarant, by acceptance of a Deed therefor, covenants and agrees, and shall be personally obligated to maintain said common private driveway in the same proportion as such common private driveway is shared with other Owners.

Section 4.28 Special Easement. Declarant hereby reserves for itself and grants to the Association, the Board of Directors, and their respective representatives, a nonexclusive easement to enter upon and use each Lot as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to these Declarations.

Section 4.29 Party Walls.

- (a) Each wall which is built as a connection of two or more Residences and which is constructed upon the property line between two Residences shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 4.30, the general rules of law of the State of Colorado regarding party walls and liability for property damage due to negligent or intentional acts or omissions shall apply thereto.
- (b) The cost of reasonable repair and maintenance of a party wall damaged or destroyed without the fault of an Owner shall be shared equally by the Owners of all Residences of which such wall is a part. In such event, any Owner of Residence of which such wall is a part may restore or reconstruct it, the other Owners of Residence of which such wall is a part shall contribute and share equally with such Owner in the cost of such restoration or reconstruction.

- (c) The cost of reasonable repair and maintenance of a party wall damaged or destroyed through the negligent or intentional act or omission of an Owner shall be borne exclusively by such Owner. Any other Owner of Residence of which such wall is a part may cause the repair or reconstruction of such party wall, and the Owner whose negligence or intentional acts or omissions caused such damage or destruction shall promptly reimburse the reasonable costs of such repair.

Section 4.30 Owner's Failure to Maintain or Repair. In the event that a Lot and the improvements thereupon are not properly maintained and repaired, or in the event that the improvements on the Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon.

## **ARTICLE V ASSOCIATION MEMBERSHIP. VOTING RIGHTS. INDEMNITY**

Section 5.1 Purposes and Powers. The HOA shall be a corporation organized pursuant to the Colorado Revised Nonprofit Corporation Act, 7-121-101, *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 (ACC), the management of irrigation run-off and storm water, maintenance of 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. The Owner(s) of a Lot shall be entitled to one vote per question presented; the Owner or Owners shall exercise the vote of each Lot as they determine, however, not more than one vote can be cast with respect to any Lot for any question presented; if a Lot is owned by multiple Owners, such Owners shall cast the vote allocated to such Lot as is provided in §38-33.3-310(1)(a), C.R.S.

Section 5.3 Directors of the HOA. The affairs of the HOA shall be managed by the directors of the HOA, known as the Board of Directors (Board). Until Declarant relinquishes control of the Board to the Owners pursuant to Section 5.4 below, the Declarant shall act as the Board; thereafter, the Board shall have three or more members as determined by the Lot Owners. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the HOA.

Section 5.4 Management of the HOA.

(a) From the 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, and the Declarant shall act as the ACC. The period of Declarant's control of the Association shall terminate no later than the earlier of: sixty days after conveyance of seventy-five percent of the Lots to Owners other than Declarant; or, two years after the last conveyance of a Lot by Declarant in the ordinary course of business.

(b) Declarant may voluntarily surrender the right to appoint and remove officers of the HOA and members of the Board or the ACC before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the HOA or Board or the ACC, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(c) Not later than sixty days after conveyance of twenty-five percent of the Lots to Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Board shall be elected by Owners other than Declarant. Not later than sixty days after conveyance of fifty percent of the Lots to Owners other than Declarant, not less than thirty-three and one-third percents of the members of the Board shall be elected by Owners other than Declarant.

(d) Not later than the termination of Declarant's control, the Owners shall elect a Board of three (3) or more members, at least a majority of which shall be Owners other than Declarant or designated representatives of Owners other than the Declarant.

(e) The Board shall elect the officers of the Association.

(f) The Owners, by a vote of sixty-seven percent (67%) of all persons present and entitled to vote in any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant during the period of Declarant's control.

(g) Within sixty 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, as further detailed in Section 38-33.3-303, C.R.S.:

(i) the original or a certified copy of this Declaration, the HOA's articles of incorporation, bylaws, minute books and records, and any rules or regulations that have been adopted;

(ii) an accounting for HOA funds and financial statements if Declarant has imposed regular annual assessments;

(iii) the HOA's funds or control thereof;

(iv) all of the HOA's personal property;

(v) a copy of the plans and specifications used in construction of the improvements (if any) to the Common Area(s);

(vi) copies of all insurance policies which name the HOA, the Owners, or the members of the Board as insured persons;

(vii) copies of all certificates of occupancy for the improvements (if any) on all Common Area(s), including any other permits issued by governmental bodies applicable to the Common Area(s);

(viii) any written warranties relating to property of the HOA that are still effective;

(ix) a roster of Owners, mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records; (x) All employment contracts, if any, in which the HOA is a contracting party; and,

(xi) All service contracts in which the HOA or the Owner's have any obligation to pay a fee to the persons performing the services.

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

Bylaws of the Association.

Section 5.6 Duties of the Board; Indemnification of Officers and Directors. Section 38-33.3-303, C.R.S., provides for the exercise of care in the performance of the duties of the officers and members of the Board of the HOA:

(a) If appointed by the Declarant, the officers and members of the Board are required to exercise the care required of fiduciaries of the Owners;

(b) For officers and members of the Board not appointed by Declarant, no members of the Board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions. Except as provided otherwise by the foregoing sentence, and except as provided for in §7-128-402, C.R.S., 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, the ACC or any committee of the Association, provided that such person has acted in conformity with applicable law, including the provisions of said Sections 38-33.3-303 and 7-128-402, C.R.S., and § 7-128-403, C.R.S.

Section 5.7 Enforcement. 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 the Mesa County District, County or Small Claims Court 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 VI ARCHITECTURAL CONTROL COMMITTEE**

Section 6.1 Composition of Committee.

(a) The Architectural Control Committee (AAC) 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 ACC. A reasonable effort shall be made to have an architect, or a person with similar skills and knowledge, as a member of the ACC. A majority of the ACC may, from time to time, designate a representative to act for it. The power of the Declarant to act for the ACC, as provided herein, 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 therein, for whatever reason; remove any member of the ACC, 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.

(b) The ACC shall have the right to adopt Architectural Control Guidelines from time to time to assist owners who thereafter apply for ACC approval.

(c) The ACC shall exercise its best judgment in interpreting and implementing this Declaration and the duties, powers and responsibilities of the ACC.

(d) When the members of the ACC conclude that they do not have the expertise to review a particular application or request before it, they may reject or disapprove the application unless the requesting Owner agrees to pay for engineering, architectural and/or other professional services rendered to the ACC in conjunction with the request or application. If such an Owner fails to timely pay for such services, the ACC 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 this Declaration.

(e) Review and approval by the ACC does not relieve an Owner from his/her sole responsibility to abide by all of the rules of this Declaration, and any rules adopted by the HOA and/or the ACC. Each Owner, by acceptance of a deed to a Lot, agrees that, notwithstanding any acts or failure to act of the ACC, the HOA may enforce its rules, the rules of the ACC, 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 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 complete sets of proposed plans and specifications for such construction or alteration or landscaping are submitted to and approved by the ACC prior to the commencement of such work.

**Section 6.3 Approval Process.**

(a) All applications shall be submitted to the ACC in writing and in duplicate.

(b) The ACC shall approve or disapprove in writing all plans and requests within thirty (30) days after receipt by the ACC of all required documentation as described in section 6.4. In the event the ACC fails to disapprove 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 ACC is required for approval or disapproval of proposed improvements or other work.

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

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

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

**Section 6.4 Plans.** Plans and specifications submitted to the ACC 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 ACC to properly consider and make a determination thereon. Submittals shall include a minimum of:

- (a) Site plan showing property boundaries, setbacks, building envelop, 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;
- (d) Samples of roof and external materials including, trim and accent colors for principal and accessory buildings and all other structures;
- (e) Landscaping. See §4.2

Section 6.5 Variance. Where circumstances such as topography, location of trees, brush, rock, outcroppings, area aesthetic considerations, or other matters require or allow, the ACC 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. All such decisions shall be in writing and shall be kept as a permanent record by the ACC.

Section 6.6 Best Judgment. The ACC 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 Other Considerations. Careful attention shall be given to aesthetic consideration of any design submitted, in order to enhance the entire Property. The ACC will consider the following:

- (a) The overall nature and character of the Property and appearance of the structure, including orientation with regard to sun, wind, view, slopes, privacy and the consistent quality use of exterior materials;
- (b) The minimal grading of building sites to preserve natural terrain and foliage;
- (c) The use of earthen colors and discouragement or prohibition of bright colors;
- (d) The installation of patio structures designed such that they will blend with and complement the appurtenant structure; and
- (e) The use of landscaping and plantings complementary to the residential character of the Subdivision and sensitive to environmental considerations, including but not necessarily limited to water conservation.

Section 6.8 Liability. Subject to the overriding provisions of §38-33.3-303(3)(b) C.R.S. (which provides that decisions concerning the approval or denial of an Owner's application for architectural or landscaping plans to the ACC decisions must be made in accordance with the standards and procedures set forth in the bylaws and this Declaration or in duly adopted rules and regulations, and shall not be made arbitrarily or capriciously), the ACC, 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. Except as otherwise provided by law, including but not limited to §38-33.3-303, C.R.S., any Owner submitting or causing to be submitted any plans and specifications to the ACC hereby agrees and covenants that he will not bring any action or suit to recover damages against the ACC, the HOA, the Declarant or any Owner collectively, its members individually or its advisors, employees or agents, and that such Owner releases the ACC, the HOA, the Declarant, or any other Owner from any such claims or actions.

Section 6.9 Vote and Appeal. A majority vote of the ACC 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 ACC to the Board of Directors if the Board is composed of different members than the ACC, and, in such event, the decision of the Board shall be final.

## **ARTICLE VII ASSESSMENTS**

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

(a) Each Owner of any Lot, including Declarant, 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 HOA: (1) annual assessments or charges for Association Expenses, and (2) special assessments for Association Expenses and, as may 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/fees, 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 lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the HOA 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.

(c) Each assessment, annual and special, together with interest, late charges/fees, 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.

(d) 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.

(e) Notwithstanding other provisions herein, the Owners of Vacant Lots shall pay one quarter (1/4) of annual assessments for the first four (4) years of ownership of a Vacant Lot; this provision applies to Declarant as well as every other Owner. "Vacant Lot" means a Lot for which a certificate of occupancy has not been issued. By way of example, a Lot for which a foundation permit has been issued, or a building permit has been issued, is "vacant" until the certificate of occupancy has been issued by the applicable building official.

Section 7.2 Adoption and Purpose of Assessment. The assessments levied by the HOA shall be:

(a) adopted in accordance with § 38-33.3-303, C.R.S.; and

(b) 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 One Hundred and Fifty Dollars (\$150.00) per Lot payable in annual increments. The maximum annual assessment may be increased or decreased each year not more than twenty percent (20%) above the maximum assessment for the previous year by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting called for this purpose. The annual assessment shall be in the amount sufficient to meet the expected needs of the Association and to pay the Association Expenses.

Section 7.4 Date of Commencement of Annual Assessments. The initial annual assessment shall commence on the first day of January of the calendar year following the year in which the plat for the Subdivision was recorded, and the second and each subsequent annual assessment period shall commence on each successive January 1, except that if the plat is recorded between July 1 and December 31 of any year, the initial, and all subsequent assessment periods shall be delayed by one calendar year. The annual assessments shall be made due and payable with such frequency and on such dates as determined by the Board, but no more frequently than quarterly.. Any Owner purchasing a Lot between installment due dates shall pay a *pro rata* share of the last installment due.

Section 7.5 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 7.6 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 properly adopted a budget amendment, indicating the amount and purpose of the proposed special assessment, in accordance with the procedures and requirements of §38-33.3-303(4)(a), C.R.S., to wit: The Board shall mail or email a written summary of the proposed amendment to all of the Owners, shall set a date for a meeting of the Owners to consider the budget amendment, and shall give notice of such meeting to the Owners. The proposed budget amendment shall be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners. If the proposed budget amendment is vetoed, the budget last proposed by the Board and not vetoed by the Owners shall continue to apply until a subsequent budget proposed by the Board is not vetoed by the Owners. Any such special assessment shall be assessed to the Owners by dividing 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 7.7 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 (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 fee or charge of ten percent (10%) thereon for each month, or portion of a month, during which any assessment remains unpaid, in whole or in part. Once such fees and interest are imposed, they immediately become part of "the assessment."

(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 late charges/fees, 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, late charges/fees or interest 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 non-use or abandonment of his or her Lot or by non-use or abandonment of the Common Area.

#### Section 7.8 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 fees, interest and fines imposed against its Owner, from the time each assessment fee, interest 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 Mesa County Clerk and Recorder 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.

(d) Upon written request (delivered personally or by certified mail, first-class postage prepaid, return receipt, to the HOA's registered agent), the HOA shall furnish to an Owner, or such Owner's designee or holder of a security interest or its designee, a written statement setting forth the amount of unpaid assessments, fees/charges, and interest currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the HOA, the Board, and every Owner. If no statement is mailed to the Owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party within said 14 days (excluding weekends and holidays), then the HOA shall have no right

to assert a lien upon the Lot for unpaid assessments fees, charges or interest which were due as of the date of the request.

Section 7.9 Budget Adoption and Expenditures.

(a) Within ninety (90) days after adoption of any proposed budget by the Board, the Board shall mail, email or see that a copy is personally delivered of a written summary of the proposed budget, shall set a date for a meeting of the Owners to consider the budget amendment, and shall give notice of such meeting to the Owners. The proposed budget shall be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners. If the proposed budget is vetoed, the budget last proposed by the Board and not vetoed by the Owners shall continue to apply until a subsequent budget proposed by the Board is not vetoed by the Owners.

(b) The Board of the HOA may propose a reserve or future capital expenditures account as a part of any proposed budget, subject to the requirements of Section 7.9(a).

(c) 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 every year mail, email 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.

(d) A Member or Owner shall have the right to inspect, and copy at such Member or Owner's expense, those records of the HOA as required by CCIOA.

Section 7.10 Spending of the Assessments. The Board shall:

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

(b) Pay costs to maintain and/or repair any portion of the Subdivision's perimeter fencing that was installed by the Declarant.

(c) Pay for insurance as specified in §8.1, below, 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.

**ARTICLE VIII  
INSURANCE**

Section 8.1 Insurance. As mandated by §38-33.3-313, C.R.S., the Association shall maintain, to the extent reasonably available property insurance on the Common Areas and commercial general liability insurance, in accordance with such cited statute.

**ARTICLE IX  
GENERAL PROVISIONS**

Section 9.1 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; no such enforcement shall proceed without first providing notice and an opportunity to be heard. 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 9.2 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 9.3 Easements. Easements are reserved as shown on the recorded plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no 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.

Section 9.4 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 9.5 Street Lighting. Unless street lighting and the cost thereof is provided by the City, all Lots shall be subject to and bound by any tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting, together with rates, rules and regulations therein provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

Section 9.6 Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of twenty (20) years each. Except as provided elsewhere, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by the affirmative vote or agreement of Owners to which more than fifty percent (50%) of the votes in the HOA are allocated. The consent of first mortgagees is not required to amend this Declaration. Such amendment shall be effective when duly recorded with the County Clerk. The HOA may, acting through the Board, petition the district court for Mesa County, Colorado, for an order amending the Declaration, as provided for and pursuant to the provisions of § 38-33.3-217(7), C.R.S.

(b) In addition, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any agency, Declarant shall have and is hereby specifically granted the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of

this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's control of the Association.

(c) Further, Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or Bylaws of the Association at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 9.7 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 the Common Area and 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 9.8 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 its stands, shall and does exist.

Section 9.9 Registration by Owner of Mailing Address. Within thirty (30) days of taking title, each Owner shall register his mailing address and an email address with the Association. All notices or demands intended to be served upon an Owner shall 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 or by email, with proof of delivery. However, if any Owner fails to so notify the Association of a registered address or an email address, then any notice or demand may be sent to such Owner at the address of such Owner's Lot or if no address has been assigned, to the address shown in the records of the County Clerk and Recorder. 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: Gear Estates Homeowner's Association, Inc., 2460 Patterson Road #6 , Grand Junction, CO 81505 until such address is changed by the Association.

Section 9.10 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.

