

17 PAGE DOCUMENT

**REPLACEMENT DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR DILASHA ACRES SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into this 26 day of JUNE, 2008, by the owners of the lots in DILASHA ACRES SUBDIVISION, ("Declarants").

**RECITALS**

- A. The Plat creating Dilasha Acres was recorded March 4, 1998 at Plat Book 16, pages 104-106 of the records of the Mesa County Clerk and Recorder ("Clerk").
- B. Protective covenants were recorded January 22, 1998 in Book 2397 beginning at page 17 of the Clerk's records.
- C. An Amendment No. 1 to the Protective Covenants was recorded February 10, 1998 in Book 2403, page 859 of the Clerk's records, and then superseded by an Amendment recorded February 10, 1998 in Book 2403, page 860 of the Clerk's Records.
- D. An Amendment No. 2 to the Protective Covenants was recorded July 31, 1998, in Book 2471 at Page 76 of the Clerk's records.
- E. The owners of the lots in Dilasha Acres desire to replace the Protective Covenants, as amended, with this Replacement Declaration.

NOW, THEREFORE, Declarants hereby declare that the property described on the Plat, hereinafter ("Property"), shall be hereafter held, sold and conveyed subject to the terms herein for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and each lot 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. Declarants intend that Dilasha Acres shall be a planned community, pursuant to §38-33.3-205 (1) (a), C.R.S.

**ARTICLE I  
DEFINITIONS**

Section 1.1 "Association" or "HOA" shall mean and refer to the Dilasha Acres Homeowners Association, Inc., a Colorado nonprofit corporation, its successor and assigns.

Section 1.2 "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 any Common Areas (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 1.3 "Association Water" or "Water" means run-off and storm drainage waters and the irrigation water shares which are described in § 4.1 (f), below.

Section 1.4 "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 1.5 "By-laws" shall mean the by-laws adopted by the Association as amended from time to time.

Section 1.6 "Common Area" shall mean and refer to Outlot A and Outlot B, and the utility, irrigation, drainage, and/or multi-purpose easements, all as shown or dedicated on the Plat.

Section 1.7 "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 1.8 "Declarant" shall mean and refer to the owners of the lots in Dilasha Acres Subdivision and the Association, as the owner of the Common Area and their successors and assigns.

Section 1.9 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions ("CCR"s), as the same may be amended from time to time.

Section 1.10 "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 Mesa County Clerk, Colorado, 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 1.11 "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 1.12 "Lot" shall mean and refer to any separate numbered lot shown upon the Plat, as the same may be amended from time to time, together with all appurtenances and improvements now or hereafter, with the exception of the Common Area as defined herein.

Section 1.13 "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.

Section 1.14 "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 1.15 "Property" shall mean and refer to that certain real property described in this Declaration, namely the Lots created by the Dilasha Acres Subdivision Plat.

Section 1.16 "Residence" shall mean and refer to any residential improvement constructed within the Property, including accessory buildings.

Section 1.17 "Subdivision" shall refer to Dilasha Acres Subdivision.

Section 1.18 Terms not defined herein shall have the meaning defined in the Mesa County Land Development Code, as amended from time to time.

Section 1.19 These CCR's are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date they are recorded after which time these CCR's shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the Lots has been recorded, agreeing to terminate these CCR's, or change them in whole or in part. These CCR's may be amended during the first twenty (20) years from the date recorded by a recorded instrument signed by all owners of not less than seventy percent (70%) of the lots.

## ARTICLE II PROPERTY RIGHTS

Section 2.1 **Property Subject to Declaration.** The owners of all of the Lots in Dilasha Acres Subdivision and the Association, do hereby subject all Lots, Common Area and 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 Properties, 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 or on the Plat. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, irrigation system or lines, or drainage facilities.

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.

Section 2.4 **Extent of Owners' Right.** The Owners' right of use and enjoyment of the Common Area 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 of the Common Area.

### **ARTICLE III ALLOWED USES**

Section 3.1 **General.** All of said Lots shall be used only for residential purposes and non-commercial agriculture purposes. No structure other than one detached single family Residence per Lot, along with accessory structures directly incidental to the residential and agricultural use on the respective Lot, as permitted by the applicable local government, shall be constructed or permitted on a Lot. Every Residence shall have an attached private garage for not less than two and not more than three vehicles. Every driveway shall be constructed and maintained as concrete, asphalt or screened gravel. Culverts shall be installed, by each Lot Owner, under each driveway. Culverts shall be a minimum of ten inches (10") in diameter, and of a minimum grade of ADS N12 polyethylene pipe. An Owner may keep recreational vehicles, including trucks, campers, boats, snowmobiles, motorbikes or any other recreational vehicles that are stored on the Lot, so long as all such vehicles are located or stored behind the principal Residence front setback line of fifty feet (50'). All Residences shall be constructed so as to provide sufficient off-street parking for such Owner's guests, family and invitees. No on-street parking of any vehicles by the Owners, occupants, or guests shall be permitted. Vehicular maintenance or repair, which renders any vehicle inoperable for more than forty-eight (48) hours, is prohibited on any street, driveway, yard, or other visible location in the Subdivision. No commercial vehicular repair or other repair of vehicles not owned by the Lot Owner shall be conducted within the Subdivision.

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 one hundred ninety six (196) square feet are allowed if located on the rear half of a Lot and if screened from view from another

Lot and from TZ Trail and XL Spur, including any extensions of either. All other structures on a Lot shall be of new construction built on-site. No previously erected house shall be moved and set upon any Lot from any other location. Detached accessory building or outbuildings shall blend and conform to the general design and materials of the principal Residence on the lot.

Section 3.3 **Living Area.** The total finished living area of any Residence, exclusive of one-story open porches and garages shall be not less than 1800 square feet. 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.

3.3.1 If the Residence has a second story, the ground floor area of the Residence, exclusive of open porches and garages, shall be not less than 1,200 square feet, outside measurements, with a total living space on the first and second floors of not less than 1,000 square feet per floor, using outside measurements.

3.3.2 If the Residence is a split-level residence, the greatest outside measurements, exclusive of open porches and garages, shall be used to determine square footage, and, therefore different floor levels which are superimposed upon each other shall be included only once in such measurement.

3.3.3 "Basement," as used herein, shall mean a floor space, the floor of which is more than four (4) feet below the grade of the surface at the exterior of the Residence. Such floor space shall not be included in complying with the minimum floor space requirements herein.

Section 3.4 **Building Height.** No structure shall exceed thirty-six (36) feet in height measured from original grade to the highest part of the roof, excluding chimneys and vents.

Section 3.5 **Outbuildings-Setbacks.** Structures other than the principal Residence shall conform to the exterior design of the principal Residence. Setbacks for structures shall be in accordance with the approved site plan and Plat for the Property, and in accordance with the requirements of the applicable local government. No structure shall be located nearer than fifty (50) feet to the front, back or any side property line of the Lot.

Section 3.6 **Building Material.** (a) The outside façade of each exterior surface of each structure constructed after the date of recordation hereof shall be constructed of and maintained with wood, brick, stucco, metal or vinyl, or combinations of those materials.

(b) The roofs on all structures shall be covered with wood shakes, tile, slate, architectural fiberglass asphalt roofing shingles, rubber, or other similar material, membrane or steel. Common three tab asphalt shingles and rolled roofing are not permitted.

Section 3.7 **Pets-Livestock.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot for commercial purposes. Household animals, such as dogs and cats, may be kept provided that they are not kept, bred or maintained for commercial purposes. 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 Lot Owner is responsible for each pet contained or allowed on such Owner's Lot, and shall control, clean-up and properly dispose of all pet waste. Each lot shall be limited to farm animals as listed in the chart following:

<u>Animal</u>	<u>Number Allowed Per Acre</u>
Cattle	One head per acre (a cow/calf pair shall count as one head), or;
Horses	One head per acre, or;
Sheep	One flock per acre  (For the purposes of these covenants, the number of flocks shall be determined as follows: 1-5 sheep = one flock 6-10 sheep = two flocks 11-15 sheep = three flocks 16-20 sheep = four flocks)

As per Mesa County Zoning and Development Code

The number of animals allowed per acre as set forth above is non-cumulative – for example, if an owner owns a lot consisting of three acres and has three horses on the lot, he cannot place any cattle or sheep or other horses on his lot. All corrals, barns, sheds and pens for livestock must be kept in sanitary conditions so that it will not be a nuisance to other owners. Prior to placing any livestock on the property, an owner shall properly fence his property to contain such livestock on his property.

Section 3.8 Fencing/Screening. (a) No fences higher than seventy-four inches (74”) shall be allowed. Each fence must have a permit from the applicable local government before installation. Each Lot Owner shall maintain each fence on a Lot, or on the boundary of a Lot, in good order and repair. The HOA has the power, but not the duty, to maintain any fence if the Owner fails to do so after the HOA gives 30 days written notice to the Owner's address as kept by the Association. The costs of such repair and/or maintenance shall be assessed against the Owner's Lot as a special assessment.

(b) All clotheslines, implements, recreational vehicles, snowmobiles, ATVs, boats, equipment, wood piles, storage piles and areas shall be kept screened from all other Lots by adequate vegetation and/or fencing to conceal them from view from off the Lot, as much as possible. Any boat, trailer, motor home or recreational vehicle of any type, including snowmobiles and ATVs, may be stored or permitted on a Lot only if completely contained in a garage, in a fully-enclosed space or screened by fence, vegetation or the principal Residence front setback line of 50

ft. to the extent possible.

Section 3.9 **Home Occupations**. No Lot or any improvements situated thereon may be used for commercial purposes of any type whatsoever, excepting for home occupations that are allowed by the applicable local government and this Declaration. Commercial use of any lot is prohibited, except that each Owner may maintain an office in the home for personal use and may engage in home business activities, not having any walk-in or customer traffic to the home, to the extent that such home business activities are permitted by applicable town or county codes or regulations. Operation of retail sales, manufacturing, auto repair, construction and the like are expressly prohibited. For purposes of this Declaration, "home occupation" shall have the meaning set forth in the Mesa County's Land Development Code as of the date hereof.

Section 3.10 **Limits on Use of Western Stub Street**. The use of the "stub" street *i.e.* extension of XL Spur, located on the western boundary of the Property between Out lots A and B, which may eventually be improved by others to provide access to the adjacent property to the west of the Property, is prohibited to be used by vehicular traffic, especially trucks, until said extension of XL Spur is improved and accepted for further maintenance by Mesa County, and until said extension connects to County approved street(s) on the adjacent property to the west.

Section 3.11 **Agricultural Practices**. Agricultural practices such as weed burning, ground spraying, fertilizing, field preparation and other practices pertaining to good farm and livestock management shall be allowed on the Common Areas and Lots. Owners or residents shall practice weed and insect management as to not impact neighboring properties. Crop types shall be limited to the following: hay, alfalfa, grapes, small orchards or other types with approval from the Board. The owner or resident can employ workers to assist in maintaining approved crops.

#### ARTICLE IV MAINTENANCE. OTHER RULES.

Section 4.1 **Landscaping, Maintenance**. Each Owner shall keep, maintain, and repair their Lot and improvements thereon, including landscaping, in a neat, clean, cultivated, attractive and well-maintained condition, free from trash and other debris. In the event that any owner fails to keep and maintain their Lot and improvements thereon in accordance herewith, the Association may give a 30 day written notice, and if the noticed repairs and/or maintenance are not completed in a time frame set by the Association (but is not obligated to) cause such maintenance and/or repairs to be accomplished and assess the whole cost thereof to the Owner and lot on which such maintenance and/or repairs were conducted.

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

(b) Each Owner shall landscape, plant, and thereafter maintain, their Lot as a neat, well-maintained Lot.

(c) In the event the Owner fails to keep and maintain the Lot, landscaping and/or Improvements in accordance herewith, the Association may, but shall not have the obligation to,

upon 30 days written notice, cause such repairs or maintenance as may be needed to comply herewith, remove accumulations of trash or debris, cut weeds and/or maintain the landscaping and exterior of all structures: The costs of such Association work, maintenance and/or repairs shall be assessed to and against the Owner, jointly and severally, and the respective Lot.

(d) The Association shall maintain and repair the Common Area as a Common Expense of all of the Lots. Each Owner shall share equally the cost of development, maintenance and upkeep of the Common Area, based on the number of Lot(s) owned relative to the total number of Lots in the Subdivision. The Association shall establish rules and regulations as deemed necessary to regulate the use of the Common Areas.

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

(f) The irrigation system provided in the Subdivision shall be maintained by the Association, as a Common Expense. The homeowner is responsible for maintenance of all components past the riser, connected to the Association system, including the first shutoff valve. These valves are in the form of brass valves, PVC Ball Valves and/or alfalfa valves. Homeowners are required to clean the Associations headgates as per the cleaning schedule determined and distributed by the Association Board. Irrigation water is provided by the Orchard Mesa Irrigation District.

**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, guest, agent or invitee, the cost of such repair and/or maintenance shall be the personal obligation of each such Owner, and any costs, expenses and fees incurred by the Association, including attorneys fees and costs, 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 such Owner's family, guest, agent or invitee, and the amount of the Owner's liability therefor, shall be determined by the Association at an informal hearing after notice to the Owner.

**Section 4.3 Nuisances.** (a) No noxious 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, inoperable or unlicensed 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 indoors or behind a privacy fence except the day of pickup, except containers used during construction, repair and/or replacement of a 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.



Section 4.4 **Construction Completion.** The construction, including painting of the exterior, of each Residence and other Improvements on a Lot shall be completed within one (1) year of the date the construction began. All Improvements shall be completed with due diligence. No structure shall be occupied prior to its completion and issuance of a certificate of occupancy.

Section 4.5 **Signs.** (a) Section 38-33.3-106.5, C.R.S., limits the Association 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. (b) Subject to compliance with such overriding laws, the following shall apply: (i) No commercial signs of any kind shall be displayed to public view on any Lot with the exception of two "for sale" signs per Lot, which shall not be larger than ten (10) square feet each (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) Except as stated herein, no signs, advertising devices or billboards shall be displayed within the Property unless written approval therefor is granted by the Association.

Section 4.6 **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 shall be discharged upon any Lot or the Property.

Section 4.7 **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 waste water, conveyed within irrigation easements, shall be allowed.

Section 4.8 **Drainage.** (a) 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.

(c) Lot owners are required to maintain the irrigation drainage easements to provide adequate flow for irrigation and storm water runoff.

Section 4.9 **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 4.10 **Weeds.** Noxious weeds/vegetation, as designated by the Mesa County or other applicable governmental authority, that are located or present on a Lot or the Common Area shall be removed. The Association 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 Association 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 Association shall have the duty to remove noxious weeds from the Common Area.

Section 4.11 **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, Common Area or adjacent property unless the drainage/run-off water flows in a designated drainage easement.

## 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 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 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 from time-to-time, 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 Lot owned by one Owner shall be entitled to one vote and the Owners shall exercise the vote of each Lot as the Owners shall determine, however, not more than one vote can be cast with respect to any Lot; 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 Association**. The affairs of the Association shall be managed by the directors of the Association, also known as the Board. The Board shall be managed by five directors,. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

Section 5.4 **Management of the Association**.

(a) The Board, shall elect the officers, who do not have to be members of the Board of Directors.

(b) 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.

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: No member of the Board and no officer shall be liable for actions taken or omissions made in the performance of the such member's or officer'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 each 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 and costs, 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, an officer 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.

## **ARTICLE VI ASSESSMENTS**

### **Section 6.1 Creation of the Lien and Personal Obligation of Assessments.**

(a) Each Owner of any Lots, 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, (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 and for special assessments imposed because of the failure of an Owner to comply with any provision of this Replacement Declaration. The annual and/or special assessments, together with interest, late charges, costs, and reasonable attorney's fees and costs, 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, jointly and severally, 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 and costs. 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.

(c) 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.

(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.

Section 6.2 **Adoption and Purpose of Assessment.** The assessments levied by the Association 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 6.3 **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.

Section 6.4 **Frequency of Annual Assessments.** 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 monthly. Any Owner purchasing a Lot between installment due dates shall pay a *pro rata* share of the last installment due.

Section 6.5 **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 6.6 **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 Section 6.9. 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 6.7 **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 twenty-one percent (21%) 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 or guest, invitee or agent of such 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 6.8 Lien for Assessments.** (a) Pursuant to §38-33.3-101, *et seq.*, C.R.S. ("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 and costs, 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 attorney's fees and costs 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 Association), the Association 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 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 Association, the Board, and every Owner. If no statements is furnished 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, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request.

Section 6.9 **Budget Adoption and Expenditures.** (a) Within thirty (30) days after adoption of any proposed budget by the Board, the Board, shall mail 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 Association may propose a reserve or future capital expenditures account as a part of any proposed budget; subject to the requirements of Section 6.9(a).

(c) The Board shall, either through the efforts of its Members or Officers, or by engaging professional services, keep current and accurate records of all income and expenditures, and shall at least once every year mail or deliver to each Owner a report showing all such income and expenditures and a summary analysis indicating whether or not the Association 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's or Owner's expense, all or any of the records of the Association upon five (5) business days notice of such request, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days of the request.

Section 6.10 **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 any costs of electricity and water associated with the Common Areas;

(c) Pay for insurance as specified in §7.1, below, and other insurance (such as errors and omissions insurance for the Association and its officers and board members) as the Board deems appropriate from time to time.

(d) Pay any other bills or expenditures duly authorized by the Board of Directors and/or Officers.

## ARTICLE VII INSURANCE

Section 7.1 **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 the amount of at least one million dollars (\$1,000,000.00) to protect the Association, the officers and directors of the Association and the Owners against any damages or claims that may be awarded against them for any lawful acts in connection with the Subdivision or the use of the Common Areas.

## ARTICLE VIII GENERAL PROVISIONS

Section 8.1 **Enforcement**. Enforcement of the covenants, conditions, restrictions, easements, reservations, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended from time-to-time, 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 commence 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 and costs 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 8.2 **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 8.3 **Easements**. The Association hereby reserves the right to enter upon the Property and each Lot to correct any flow of water and/or to establish and re-establish drainage channels. The Association reserves the right to bill the Lot Owners involved for this work. Section 4.8 describes the primary responsibility for maintenance of easements.

Section 8.4 **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 8.5 **Street Lighting**. Unless street lighting and the cost thereof is provided by a local government, 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. Street lighting costs may be included in the Common Expenses.

Section 8.6 **Easement for Encroachments**. If any portion of a structure or other Improvement 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 or Residence 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 8.7 **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 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. 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: Dilasha Acres Homeowners Association, P. O. Box 651, Grand Junction, Colorado 81502-0651, until such address is changed by the Board.

Section 8.8 **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 8.9 **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 8.10 **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. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.



By: Tim Markley   
Owner and President of Dilasha Acres HOA

Address: 166 TZ Trail  
Grand Junction, Colorado 81503

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF MESA        )

Subscribed and sworn before me this 22 day of April, 2008 by TIMOTHY MARKLEY, who is personally known to me or who proved to me upon presentation of personal identification that he/she is the person who signed the foregoing.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
**My Commission Expires**  
**01/31/2011**

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

