

29 PAGE DOCUMENT

**AMENDED AND RESATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
AUTUMN BREEZE SUBDIVISION**

THIS AMENDED AND RESATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AUTUMN BREEZE SUBDIVISION ("Declaration") is made the 14<sup>th</sup> day of August, 2007, by Darter, LLC, a Colorado limited liability company ("Declarant").

**RECITALS**

A. A Declaration of Covenants, Conditions and Restrictions for Autumn Breeze Subdivision was previously recorded March 28, 2007 in Book 4384 at Page 893, Reception Number 2371450, of the Mesa County, Colorado real property records ("Original Declaration").

B. Under Section 12.16 of the Original Declaration, the Declarant may transfer any or all of its rights to a successor Declarant. An assignment of Declarant Rights was recorded April 16, 2007 in Book 4401 at Page 204, Reception Number 2375042, of the Mesa County, Colorado real property records accomplishing such assignment from Autumn Breeze, LLC to Darter, LLC.

C. Pursuant to Section 12.04(a) of the Original Declaration, the Original Declaration may be supplemented, changed or canceled in whole or in part at any time by the vote or agreement of the Owners of 67% of the Lots that may be created.

D. Declarant is the owner of all Lots within the Subdivision.

E. Declarant wishes to amend and restate the Original Declaration in its entirety.

F. Declarant desires to impose a general plan for the improvement, development and maintenance of the Property, and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enhancing, maintaining and protecting the value and desirability of the Property in accordance with the terms and conditions of this Declaration.

THEREFORE, Declarant covenants, agrees and declares that the Property is a planned community, as defined in CCIOA, which shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the following limitations, restrictions, easements, covenants, conditions, reservations, liens and charges described in this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the improvement and development of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Property or any part of it and the successors in interest of such parties, and are imposed upon the Property and every part of it as equitable servitudes that may be enforced by Declarant, its successors and assigns, each Owner, his or her successors and assigns, or by the Association, its successors and assigns. The Original Declaration is replaced and superseded in its entirety by this Declaration.

**ARTICLE 1  
DEFINITIONS**

Section 1.01. "Architectural Control Committee" or "ACC" shall mean and refer to the committee appointed by Declarant or by the Board of Directors, as more fully provided in Article 8.

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

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

- (a) "Regular Assessment" shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot, including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.
- (b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his or her Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a Special Assessment.
- (c) "Capital Assessment" shall mean and refer to a charge against any Lot representing a portion of the Association's cost for the purchase, installation, construction, expected or unexpected repair or replacement, of any capital improvement (including the necessary fixtures and personal property related to it) that is a Common Expense of the Association, plus reserves for repair or replacement of existing capital items, and acquisition, construction and installation of new capital improvements.

Section 1.04. "Association" shall mean and refer to Autumn Breeze Homeowners Association, a nonprofit corporation incorporated under Colorado law.

Section 1.05. "Association Water" shall mean and refer to all water and water rights appurtenant to, associated with or used in connection with all or any part of the Property, plus any other water or water rights, ditch or ditch rights, reservoir or water storage rights appurtenant to any portion of the Property or used in connection with any portion of the Property and owned or controlled by the Association.

Section 1.06. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

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

Section 1.08. "CCIOA" means the Colorado Common Interest Ownership Act, presently codified at C.R.S. §38-33.3-101, *et seq.*, as it may subsequently be amended from time to time.

Section 1.09. "Common Area" shall mean any and all real property, and the improvements and fixtures on it owned, leased or controlled by the Association for the common use and enjoyment of the Members, including but not limited to Tract A, Tract B and Tract C as depicted on the Map, any Irrigation Facilities, retention area, detention area, pedestrian path, landscaping, street or lighting fixture owned or controlled by the Association, as well as signage on any Common Area or for the general benefit of the Subdivision or Owners, whether or not located on the real property owned or leased by the Association. The Common Area shall be as shown on the recorded plat of the Property and described on the Map.

Section 1.10. "Common Expenses" shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.11. "Conveyance" shall mean and refer to transfer of a fee simple title by deed, installment land purchase contract or otherwise of any part of the Property.

Section 1.12. "Declarant" shall mean and refer to Darter, LLC, a Colorado limited liability company, and its successors and assigns designated in writing to be the successor of Declarant, subject to any limitation on transfer of Special Declarant Rights contained in this Declaration, CCIOA or other applicable law.

Section 1.13. "Irrigation Facilities" shall mean and refer to all improvements, equipment, facilities, and other real and personal property owned, operated, or maintained by the Association for the purpose of delivering water to the Lots and Common Area for irrigation purposes, and shall include, but not be limited to, all pumps, pipes, pipelines, risers, connectors, controls, siphons, filters, valves and related parts and materials located in, under or upon easements within the Subdivision, or elsewhere outside of the Subdivision. Irrigation Facilities shall not include the "stub out" or "lateral" pipelines that extend beyond the exterior of the irrigation and maintenance easement or street, as the case may be, within the Subdivision and into a Lot.

Section 1.14. "Lot" shall mean and refer to each numbered lot of the Property described in the Map as recorded and amended. Boundaries of a Lot shall be as shown and defined on the Map.

Section 1.15. "Map" means the map of the Property attached to this Declaration as Exhibit A pursuant to the requirements of CCIOA.

Section 1.16. "Member" shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.17. "Owner" shall mean and refer to Declarant and to any other person or entity holding a fee simple ownership interest in any Lot that is a part of the Property, including contract purchasers and lessees with enforceable options to purchase, but excluding mortgagees (unless and until a mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.18. "Property" shall mean and refer to that certain real property in Mesa County, Colorado, described in Recital Paragraph A and as further shown and described on the Map, together with such additions, if any, as may subsequently be brought within the jurisdiction of the Association by expansion or amendment of this Declaration (by exercise of Special Declarant Rights or otherwise).

Section 1.19. "Residence" means the single family dwelling improvements (including garage, whether attached or detached, but excluding any outbuildings) located on a Lot.

Section 1.20. "Special Declarant Rights" shall mean and refer to the development and other rights expressly reserved for the benefit of Declarant in accordance with the terms and conditions of this Declaration.

Section 1.21. "Subdivision" shall mean all of the Property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

## **ARTICLE 2 THE ASSOCIATION**

Section 2.01. Membership. Every Owner of one or more Lots in the Property shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article 2. No person or entity other than an Owner of one or more Lots in the Property may be a Member of the Association. No Owner shall be entitled to sever his or her ownership interest in a Lot from membership in the Association, provided, that this shall not be construed as precluding the Owner of a Lot from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership with any other person or persons.

Section 2.02. Allocation of Votes. Each Lot shall be allocated one vote in the Association, subject to Section 2.06. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of such Owners. There is majority agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. However, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy meeting the requirements set forth in the Bylaws.

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

Section 2.04. Membership Appurtenant. By accepting a deed to a Lot or other instrument the acceptance of which would render the holder an Owner, Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by Conveyance of a Lot without additional action or documentation.

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

Section 2.06. Management of the Association.

- (a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (i) twenty (20) years after the date of recording of this Declaration (the

period of Declarant's control) in the real property records of Mesa County, Colorado; (ii) sixty (60) days after Conveyance of 75% of the Lots to Owners other than Declarant; or, (iii) two (2) years after the most recent Conveyance of a Lot by Declarant in the ordinary course of business, Declarant may appoint and remove all Association officers and all members of the Board of Directors of the Association, subject to the limitations stated in this Section 2.06.

- (b) Not later than sixty (60) days after Conveyance of 25% of the Lots that may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not fewer than 25% of the members, of the Board of Directors must be elected by the Owners of Lots other than Declarant.
- (c) Not later than sixty (60) days after Conveyance of 50% of the Lots that may be created by the terms of this Declaration to Owners other than Declarant, not fewer than 33-1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.
- (d) Upon the termination of the period of Declarant control specified in subsection 2.06(a), the Owners shall elect a Board of Directors in accordance with Section 2.05 who must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.
- (e) Notwithstanding anything to the contrary stated elsewhere in this Section 2.06, by a vote of 67% of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a member appointed by Declarant.
- (f) Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control; but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or the Board (as described in a recorded instrument executed by Declarant) be approved by Declarant before they become effective.
- (g) Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in C.R.S. § 38-33.3-303(9).

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

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

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

Section 2.10. Duties and Obligations. The Association shall perform all duties and obligations specified in this Declaration, the Articles of Incorporation and the Bylaws, including but not limited to maintenance and upkeep of all Common Area. Further, to promote responsible governance, the Association shall adopt rules and regulations concerning the investment of reserve funds, the procedure for the adoption and amendment of policies, procedures and rules, and the procedure for addressing disputes arising between the Association and Owners.

Section 2.11. Actions Against Owners. The Association may take judicial action against any Owner to enforce compliance with any provision of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance, and may exercise any other right or remedy for enforcement of this Declaration permitted by law; provided, however, that the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. The mediator cannot impose a binding decision. The parties to the dispute must agree before any settlement is binding. Within fourteen (14) days after one party notifies the other of a dispute, the parties will jointly appoint an acceptable professional mediator. If the parties cannot agree on a mediator, each party shall select a professional mediator whose sole purpose shall be to select a third professional mediator who shall mediate the dispute. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty (30) days after the date the mediator is selected, or if one party does not respond or refuses to participate in selecting a mediator. If the dispute is settled through the mediator, the parties shall share equally in the mediation costs and pay their own attorney fees, if any. If the dispute is not settled by mediation and proceeds to litigation, the losing party in the litigation shall pay the prevailing party's portion of the mediation costs and its attorney fees, if any.

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

Section 2.13. Management Agreement and other Contracts.

- (a) The Association may utilize professional management in performing its duties. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years, and shall provide for termination by either party to it, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.
- (b) Any contracts, licenses or leases entered into by the Association while Declarant controls the Association shall provide for termination by either party to it, with or without cause and without payment of a termination fee, at any time after termination of Declarant's control of the Association, upon thirty (30) days prior written notice.

Section 2.14. Public Disclosures After Declarant Control. Within ninety (90) days after assuming control from Declarant pursuant to Section 2.06, the Association shall make the following information available to Owners by posting on an internet web page (if the Owners have been previously notified of the web address via mail or e-mail), maintaining a literature table or binder at the Association's principal place of business, or by mail or personal delivery:

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

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

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

### **ARTICLE 3**

#### **PROPERTY RIGHTS IN THE LOTS AND COMMON AREA**

Section 3.01. Title to the Common Area. When required by law, but not later than sixty (60) days after initial sale of the last Lot that may be created by this Declaration, Declarant shall convey fee simple title to the Common Area to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and liens and encumbrances and other title exceptions of record on the date of recording of this Declaration.

Section 3.02. Members' Easements of Enjoyment. Every Member shall have a non-exclusive right and easement in and to the Common Area, including, but not limited to, an easement for ingress and egress over and through the Common Area. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area;
- (b) The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Area or any part of it in accordance with Section 2.12 for the purpose of improving the Common Area, provided any such encumbrance shall be expressly subordinate to the rights of the Members;
- (c) The right of the Association to suspend a Member's voting rights, Common Area use, and/or any benefits of membership in the Association, including the use of Association Water, for any period during which any Assessment against such Member's Lot(s) remains unpaid and delinquent, and/or while a Member is in violation of this Declaration or any rules or regulations adopted by the Association; provided that any suspension of such voting rights, Common Area use, or benefits of membership in the Association, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee of the Association after notice and hearing given and held in accordance with the Bylaws of the Association;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; no such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members entitled to cast 67% of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action



is sent to every Member no less than thirty (30) days nor more than sixty (60) days in advance;

- (e) The right of Declarant or its designees to enter upon the Common Area for purposes of construction and development of the Subdivision and for purposes of making repairs and remedying construction defects; provided such entry shall not unreasonably interfere with the use and enjoyment of any Lot upon which a Residence has been constructed, unless authorized by the Owner; and
- (f) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

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

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

Section 3.05. General Restrictions.

- (a) All Owners of Lot(s), by their acceptance of their respective deeds or other instruments causing them to become Owners, covenant and agree that the Common Area shall remain undivided, and no Owner shall bring any action for partition (which right is expressly waived), it being agreed that this restriction is necessary to preserve the rights of Owners with respect to the operation and management of the Property.
- (b) No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Area, if any, to all Members, nor shall any Owner place any structure or fence (except those installed by Declarant) upon the Common Area.

**ARTICLE 4**  
**COVENANT FOR ASSESSMENTS**

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The undersigned, for each Lot within the Property, covenants (and each Owner of any Lot by acceptance of a deed or other conveyance for that Lot, whether or not it shall be so expressed in that instrument, is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; (b) all fees, charges, late charges, attorney fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by C.R.S. § 38-33.3-316(1) or any other provision of CCIOA or by any other applicable law. The Association shall have the right, independent of CCIOA, to impose reasonable charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, or the rules and regulations of the Association.

Any charge set forth in this Section 4.01, from the time such charge becomes due, shall be a charge on and covenant running with the land, and shall be a continuing lien on the Lot against which each such item is assessed. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. A valid acceleration of installment Assessment obligations may be made by the Board at any time any Assessment or Assessment installment is at least thirty (30) days overdue.

Each such charge, together with interest, costs, and reasonable attorney fees, shall also be the joint and several personal obligation of each person and entity who was the Owner of the Lot at the time when the item became due; provided that, this personal obligation shall not pass to an Owner's successors-in-interest unless expressly assumed by them. No Owner may be exempt from liability for Assessments by waiver of use or enjoyment of the Common Area, Association Water, or other assets or benefits of the Association, or by abandonment of any Lot.

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

Section 4.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety, or welfare of the residents of the Property; for the benefit of the Common Area or Association Water; or for any other purpose of the Association, as those purposes (as amended from time to time) are specified in this Declaration, the Bylaws or the Articles of Incorporation; or as otherwise authorized or permitted by CCIOA or other applicable law.

Section 4.03. Initial Working Capital Contribution. Each Owner that purchases a Lot from Declarant shall make a non-refundable payment to the Association in the amount of \$300.00 per Lot that shall be used by the Association for Common Expenses. This payment shall be collected and transferred to the Association at the time of closing of each sale of a Lot by Declarant, and shall not relieve an Owner from making regular payments of Assessments when due.

Section 4.04. Initial Assessment. The initial Regular Assessment for each Lot shall be \$75.00. When Declarant relinquishes control of the Board to the Owners pursuant to Section 2.06, the Board shall determine the amount of the Regular Assessments based on a budget adopted by the Association as described in this Declaration. Until the Board of Directors makes the initial Assessment, all expenses of the Association shall be paid by Declarant.

Section 4.05. Date of Commencement of Assessments; Due Dates. The initial Regular Assessment shall be adjusted according to the number of months remaining in the calendar year for which the Assessment is made, if less than a full year. Thereafter, the Board shall fix the amount of such annual Assessments against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Regular Assessment (including any applicable Landscape Assessment) shall be sent to every Owner subject to the Assessment. The due date(s) shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Special Assessments and Capital Assessments may be made by the Board at any time, except as limited by this Declaration, CCIOA or other applicable law.

Section 4.06. Expense Allocation. Except as otherwise stated in this Article 4, or as otherwise provided by CCIOA or other applicable law, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of platted Lots then in the Subdivision. Despite anything to the contrary stated in this Section 4.06, if permitted or required by this Declaration (see for example Section 4.07), CCIOA or other applicable law, any Common Expense or portion of any Common Expense or other cost or expense to the Association benefiting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

Section 4.07. Owner's Negligence. In the event that the need for maintenance, repair, replacement, reconstruction or reconfiguration of Common Area, or any other Common Expense, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any family or household member, guest or invitee of such Owner, such expense and all related fees, costs and expenses of or to the Association shall be the personal obligation of such Owner and may be made part of any Assessment against such Owner and that Owner's Lot(s). Negligence or the willful act or omission of any Owner or any family or household member, guest or invitee of such Owner, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at an informal hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section 4.07 may be appealed by such Owner to a court of law.

Section 4.08. Priority of Lien. The lien for Assessments, which includes without limitation all those items specified in Section 4.01, shall have the priority specified in CCIOA (C.R.S. § 38-33.3-316(2)) or other applicable law.

## **ARTICLE 5 BUDGET AND RECORDS**

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

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

Section 5.03. Delivery of Budget. Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail by ordinary first-class mail or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget which shall be within a reasonable time after mailing or other delivery of the summary.

Section 5.04. Ratification of Budget. Unless at the meeting Owners representing a majority of all Lots veto the budget, the budget is ratified, whether or not a quorum is present.

Section 5.05. Rejection of Budget. In the event that the proposed budget is vetoed, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 5.06. Reserve Fund. As part of each annual budget, the Board of Directors shall include an amount which, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the repair or replacement of any personal property, fixtures and improvements

required to be operated or maintained by the Association based upon age, remaining life, replacement cost and any other relevant factors. Any reserve funds may be deposited in such interest bearing account(s) as the Board of Directors deems appropriate.

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

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

## ARTICLE 6 NONPAYMENT OF ASSESSMENTS

Section 6.01. Delinquency. Any Assessment provided in this Declaration that is not paid when due is delinquent. If any such Assessment is not paid within thirty (30) days after the due date without additional notice or demand, the Assessment shall bear interest from the due date at a rate not to exceed the maximum rate of interest permitted by CClOA or other applicable law, as determined by the Board. Subject to the provisions of Section 2.11, the Association may, at its option, exercise any right or remedy available to the Association under applicable law, including without limitation bringing an action at law against the Owner personally obligated to pay the same or foreclosing the lien provided in Section 4.01 against the Lot(s) as to which the Assessment has not been paid; and in any case there shall be added to the amount of such Assessment interest and all costs which may be incurred by the Association in its collection of the Assessment, including reasonable attorney fees. Each Owner vests in the Association or its assigns the right and power to bring all actions or proceedings at law or in equity or to institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 6.02. Nature of Obligation and Lien.

- (a) The obligation for 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) or demand, and without setoff or deduction. The Board or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness and the name of the Owner of the Lot and description of the Lot. Such a notice shall be signed by one member of the Board or by the managing agent of the Association and may be recorded in the real property records of Mesa County, Colorado. The lien for each unpaid Assessment attaches to each Lot at the beginning of each Assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. Each Assessment, together with interest, late

charges, costs and reasonable attorney fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass by Conveyance of a Lot.

- (b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration; and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section 6.02 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.
- (c) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recording of any claim of lien or assessment is required; however, a notice of lien may be recorded at the Association's option, in which event costs and attorney fees incurred in connection with the preparation and filing of such notice shall be assessed against the Owner's Lot as a default assessment.

Section 6.03. Foreclosure Sale. Any foreclosure sale related to an Assessment lien is to be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same in the name of the Association.

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

Section 6.05. Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale under it shall be in addition to, and not in substitution of, all other rights and remedies which the Association and its assigns may have under this Declaration and then applicable law, including without limitation a suit to recover a money judgment for unpaid Assessments, as provided above, all of which rights and remedies shall be cumulative.

## **ARTICLE 7**

### **CONSTRUCTION AND DESIGN GUIDELINES; USE RESTRICTIONS**

Section 7.01. Lot Use and Residences. Lots shall be used only for residential purposes. No building shall be erected, or otherwise altered, placed or permitted to remain on any Lot except in accordance with the terms and conditions of this Declaration. The erection of more than one Residence per Lot is prohibited.

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

Section 7.03. New Construction and Temporary Structures. All construction within the Subdivision shall be new construction. No trailer, basement, tent, shack, garage, barn, outbuilding or temporary structure shall be used as a Residence on any Lot, except as provided in Section 7.11.

Section 7.04. Prefabricated Structures. All Residences, garages and outbuildings constructed on the Property shall be of quality design, construction, workmanship and materials. No mobile homes, regardless of their quality, shall be allowed, although new manufactured homes shall be allowed if otherwise in compliance with this Declaration and approved by the ACC. This Section 7.04 shall not apply to the temporary sales and construction office used by Declarant during the development, construction, and sale of Lots in the Subdivision.

Section 7.05. Residences. Residences shall consist of at least 1,000 square feet of heated living area (excluding any basement, garage, attic, unheated storage area, and open or enclosed porches, patios and decks), and shall be no more than two (2) stories. Specifically, the two story restriction shall mean that no heated, cooled or finished living or storage space shall be constructed above any portion of any heated, cooled or finished living or storage space constructed above the ground floor of a Residence. The maximum height of a Residence, measured from the average finished grade of the Residence to the highest point of the roof, shall not exceed thirty-four (34) feet. Basements shall not be permitted without the approval of the ACC, which it may condition or deny in its sole discretion. All Residences shall be constructed in accordance with the Mesa County Land Development Code.

Section 7.06. Roofs. Roofs shall be constructed of 20-year, three-tab, asphalt shingles. Permitted colors shall include only moderate hues approved by the ACC in its discretion. Flat roofs are not permitted.

Section 7.07. Windows. Windows shall be of a design and color complementary to the exterior of the Residence. Window frames of mill finished aluminum are not allowed.

Section 7.08. Outbuildings. One shed or similar outbuilding shall be permitted on each Lot if its design, construction and materials are comparable to that of the Residence on the same Lot.

Section 7.09. Foundations and Basements. All foundations and basements shall be engineered by a registered professional engineer. Subsurface samples from building sites shall be tested for geotechnical characteristics in order to design foundations and basements appropriately. Such test results shall be filed with the Mesa County Building Department.

Section 7.10. Driveways. Driveways shall be concrete unless otherwise approved by the ACC.

Section 7.11. Temporary Sales and Construction Office. A temporary sales and construction office maintained by Declarant may be located within the Subdivision during the development, construction and/or sale of Lots and the Property. Temporary parking in front of and adjacent to the

office shall be allowed as long as the office is maintained in the Subdivision. Notwithstanding anything to the contrary in this Declaration, Declarant may maintain the office until thirty (30) days after the completion of the last Residence on the last Lot within the Subdivision, at which time Declarant will have sixty (60) days to remove the office and leave the site flat and clean so as to appear as a vacant building lot. Temporary sales signs, flags, etc. may be placed in the Subdivision during the development, construction and sale of Lots as long as the office is maintained in the Subdivision or there are development, construction or sales activities taking place. Declarant may, at its option, maintain the office located in any filing of the Subdivision for the entire duration of subsequent filings being developed, constructed and sold, or relocate the office to a location in any future filing(s). During the period of development, construction and sales, Declarant may also designate certain Lots to be used for sales offices, construction offices, storage yards and buildings.

Section 7.12. Landscaping. All front yard landscaping and any other landscaping visible from any street shall compliment the residential character of the Subdivision. A landscaping plan must be submitted to the ACC for approval within six (6) months after the purchase of a new or non-landscaped Residence, or thirty (30) days before landscaping is to be installed, whichever is first, and shall include at least one tree. Landscaping shall be completed within twelve (12) months after the purchase of a new or non-landscaped Residence. If weather will not permit the planting of plants, shrubs and grass within the time frames stated above, the ACC may grant an extension of thirty (30) days after the planting season begins in the spring following the ACC's approval of the landscaping plan. The ACC shall determine, in its sole discretion, when the planting season has begun each year based on the weather conditions for that year.

- (a) The total of the irrigated areas of a Lot shall not exceed 50% of the area determined by deducting the area of the footprint of the Residence (including garage and patio) from the total area of the Lot. Use of Association Water to irrigate Lots is subject to Article 9. All landscaping and irrigation on Lots shall be the expense of the Owner of that Lot. Xeriscaping is encouraged and is subject to the same approval by the ACC as required for other types of landscaping.
- (b) Once landscaped, each Owner shall keep all landscaping on his or her Lot neatly trimmed, properly irrigated and cultivated, and free of trash, litter, weeds and other unsightly materials at all times. Special care shall be taken to insure proper surface drainage to eliminate casual water pockets and so as not to infringe on neighboring property, Lots or Common Area.
- (c) This installation and maintenance provisions of this Section 7.12 apply only to those areas of landscaping that are in the front and side yards, and to back yards that are visible from any street.

Section 7.13. Vehicle Parking, Storage and Repair. A maximum of two (2) passenger vehicles may be parked on the driveway of any Lot. Except as provided below, no trailer, motorcycle, trucks of any nature in excess of 3/4 ton, recreational vehicles, boats, snowmobiles, ATVs (collectively "Vehicles" under this Section 7.13), or any accessories to any Vehicles, shall be parked, stored, repaired, or maintained on any Lot or Common Area, except that for a maximum period of forty-eight (48) hours, a Vehicle may be: (i) loaded or unloaded; or (ii) maintained or repaired, which includes, by way of example but not limitation, oil changes, waxing, and minor engine work. All Vehicles that are not kept in a garage must be parked in the side or rear yard of a Residence and must be screened from public view by a

privacy fence, landscaping or other means, at least six (6) feet in height approved by the ACC, and not farther forward than the front building line of a Residence. Despite anything to the contrary stated in this Section 7.13, an occupant of a Lot who is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance or emergency medical services is exempt from the requirements of this Section 7.13 if the vehicle is required to be available at designated periods as a condition of the occupant's employment, and the parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants of Lots to use streets, driveways and guest parking areas in the Subdivision.

Section 7.14. Restrictions on Storage Areas. Equipment, garbage cans, service yards, wood piles, brick piles, and storage areas shall be adequately screened by plantings or construction approved by the ACC to conceal the same from view from neighboring Lots and streets.

Section 7.15. Yards. No rubbish, debris or other such accumulations of any kind shall be placed or permitted to accumulate or remain on any Lot. All ornamentation in yards, such as, by way of example but not limitation, figurines, plastic flowers, colored lights, windmills, and bird baths and feeders, shall either be screened from public view or approved by the ACC. No clotheslines, dog runs or drying yards shall be located on any Lot so they are visible from a street. This Section 7.15 shall not apply to seasonal holiday decorations that are promptly removed after the holiday or to the display of the flag of the United States of America, which is addressed in Section 7.18.

Section 7.16. Fences, Planters and Hedges. No wall, fence, planter or hedge in excess of four (4) feet above ground level shall be allowed within any front yard setback. Front yard setbacks shall be defined according to the Mesa County Land Development Code requirements for front yard setbacks specified for the Subdivision. Open-type fencing shall be required for any front yard fencing within the front yard setback areas. No fence on a Lot shall be chain link, or greater than six (6) feet in height, without the prior express written permission of the ACC, which it may deny, delay or withhold in its sole and absolute discretion. Rear and side yard fencing shall be installed within twelve (12) months after the purchase of a new or non-landscaped Residence. Any white vinyl or cedar fence meeting the requirements of this Section 7.16 shall be permitted without ACC approval. The ACC may, from time to time, adopt written fencing standards, details and colors that differ from the standards described in this Section 7.16. Any Owner may acquire a copy of such standards upon request.

Section 7.17. Restrictions Relating to Drainage. Nothing shall be done or permitted on any Lot that would block, divert or channelize the natural flow of drainage water across any Lot from adjacent Lots, as established by the original Subdivision grading, without specific approval from the ACC.

Section 7.18. Signs and Flags. No sign, graphic, or advertising device of any kind shall be displayed on any Lot except: (i) one sign advertising the property for sale or rent; (ii) signs used by the building contractor or lender for advertising during construction and/or sales of Lots in the Subdivision; (iii) the American flag, displayed in accordance with 4 U.S.C. §§ 4 to 10 and rules and regulations adopted by the Association and not contrary to law; (iv) a service flag not to exceed nine (9) inches by sixteen (16) inches, subject to rules and regulations adopted by the Association and not contrary to law; and (v) political signs in support of candidates or ballot issues limited to the period forty-five (45) days immediately preceding the election date and seven (7) days after the election date on which the candidates or issues will be voted upon. Any permitted sign may be no more three (3) feet by four (4) feet (or smaller if required by applicable law). Signs used by Declarant for any purpose are not subject to the restrictions in this Section 7.18 or any other restrictions.



Section 7.19. Animals. No animals, livestock, reptiles, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners of each Lot may keep fish, birds and a total of two (2) dogs or two (2) cats or one of each which are bona fide household pets, as long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a danger or nuisance, by excessive noise or otherwise, to any resident(s) of the Subdivision. An Owner's right to keep household pet(s) shall be coupled with the responsibility to pay any costs to the Association for any damages caused by such Owner's pet(s) to Common Area. All animals shall be maintained on the Owner's property or on a leash. Owners shall be responsible for the cleanup of all waste from their pet(s). Habitually barking and/or vicious dogs are prohibited at the sole discretion of the Association.

Section 7.20. Antennas, Towers and Satellite Dishes. Antennas, satellite dishes and similar devices for radio, television or other electronic transmission or reception may be erected, installed or permitted to remain on a Lot only if such devices are not visible from the street in front of the Lot.

Section 7.21. Air Conditioning/HVAC Units. No window mounted air conditioning or HVAC (refrigeration, evaporative or other) units are allowed. All HVAC or air conditioning units shall be ground mounted on a concrete pad or roof mounted.

Section 7.22. Site Lines on Corner Lots. No object or thing shall be placed or planted on any corner Lot that obstructs site lines at elevations between two (2) feet and six (6) feet above the top of the street curb within a triangular area formed by the junction of the street and the curb lines and the line connecting them at a point twenty-five (25) feet from the junction of such streets, curb line, or extension thereof.

Section 7.23. Residential Use. No Lot may be used for commercial purposes, except for home occupations. For purposes of this Section 7.23, "home occupation" means an occupation conducted in accordance with county ordinances for home occupation and which does not entail the employment of third persons on the premises. This does not include the delivery of goods or services to customers upon a Lot, nor to the leasing of any Lot as described in Section 7.24. Any other commercial use shall be considered a nuisance within the meaning of Section 7.25. Declarant shall not be subject to the provisions of this Section 7.23.

Section 7.24. Leases. The term "lease" as used in this Declaration shall include any agreement for the leasing or rental of a Lot or any portion of it, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his or her Lot under the following conditions:

- (a) All leases shall be in writing;
- (b) All leases and the lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation, Bylaws and rules and regulations of the Association; the lessee's failure to comply with any of these documents, in any respect, shall be a default under the lease; and
- (c) No lease shall be for fewer than thirty (30) days.

The provisions of (b) and (c) above shall be contained in each lease, but shall also be deemed to be implied terms of each such lease, whether or not actually contained in the lease.

Section 7.25. Nuisance and Hazardous Activities. No obnoxious or offensive activity shall be conducted on any Lot, nor shall any activity be permitted that becomes an annoyance or nuisance within the Subdivision. No light shall be permitted from any Lot which is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent Lot or property, or Common Area. In addition, all exterior lighting must be downward directional, and lighting elements must be chosen to reduce or eliminate any possible glare that might affect aircraft operations. No sound shall be emitted from any Lot that is unreasonably loud or annoying and no odor shall be permitted from any Lot that is noxious or unreasonably offensive to others, as determined by the Board in its sole discretion. No activities shall be conducted on the Property or within the improvements constructed on or within the Property that are or might be unreasonably hazardous to any person or property. No firearms, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Property. In no event shall activities of Declarant that are reasonably necessary for the development and construction of the Property be considered a nuisance or hazard under this Section 7.25.

Section 7.26. Lot Maintenance. Each Lot and the improvements thereon shall be properly maintained by the Owner of such Lot. In the event any Owner fails to maintain their Lot(s) in accordance with this Declaration, the Association may hire out such maintenance as is necessary to bring such Lot(s) into compliance with this Declaration, and may assess the Owner of such Lot(s) for those costs, as provided in this Declaration.

Section 7.27. Utilities and Easements. Underground electrical, natural gas, telephone, cable television, and irrigation shall be available to all Lots. The utility companies furnishing these services shall have the easements shown on the recorded plats of the Subdivision. No permanent structure shall be erected on any such easement. Neither the Declarant nor the utility company or any entity using these easements shall be held liable for any damage done by any of them or their assigns, agents or employees to shrubbery, trees, flowers or improvements of an Owner located on any land subject to an easement. No overhead services shall be allowed to service any Lot within the Subdivision.

Section 7.28. Re-subdivision of Lots. The re-subdivision of any Lot within the Subdivision is prohibited, except for out-lots or Lots designated for future filings by Declarant, or as may otherwise be provided in this Declaration.

## **ARTICLE 8**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 8.01. Architectural Control Approval. No building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Property (including the Common Area), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, grading, irrigation systems, fences, trash receptacles) be made until plans and specifications showing the nature, kind, shape, height, materials, location, drainage and other relevant information of the same have been submitted to and approved in writing by the ACC as being in harmony with external design and location in relation to surrounding structures, topography and other matters specified in this Article 8; except, Declarant and any successor Declarant shall not be required to attain ACC approval, so long as Declarant in fact complies with the construction and design guidelines of Article 7.

Section 8.02. Procedures. The ACC shall approve or disapprove all requests for architectural control approval within thirty (30) days after the complete submission of copies of all plans, specifications and other materials that the ACC may require in conjunction with the application. If the ACC fails to approve or disapprove an application in writing within thirty (30) days after completion of submission of a plan to it, the application will be deemed to have been approved. The ACC shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping, grading and alterations to structures, other improvements and property, within the Property, conform to and harmonize with the existing surroundings, Residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the ACC may require that the applicant(s) pay the ACC a processing fee for the actual expenses incurred by the ACC in the review and approval process. Such amounts, if any, may be levied as part of the Regular Assessment against the Lot for which the request for ACC approval was made and, as such, shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection thereof, as more fully provided in this Declaration. Notwithstanding the foregoing, only the Association shall have the right to materially alter or modify the original fencing, landscaping or grading installed by Declarant within any Common Area; provided, however, that the foregoing prohibition shall not prevent the repair and maintenance of the same.

Section 8.03. Vote and Appeal. A majority vote of the ACC is required to approve a request for architectural approval pursuant to this Article 8.

Section 8.04. Records. The ACC shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 8.05. Variance. The ACC may grant reasonable variances or adjustments from any condition or restriction imposed by Article 7 in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in Article 7. Variances or adjustments shall be granted only when they shall not be materially detrimental or injurious to the other Lots or the Subdivision or the general intent and purpose of this Declaration. The grant or denial of a variance request shall not affect in any way any of the terms and provisions of this Declaration covered by the variance and shall not serve as a basis for subsequent variances with respect to any other request. The grant of any variance shall not affect in any way the Association's or Owner's obligation to comply with the Mesa County Land Development Code and other applicable governmental laws or regulations.

Section 8.06. Approval or Consent not a Waiver. The approval or consent of the ACC to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC as to any other application submitted for approval or consent under this Article 8.

Section 8.07. Time of Construction. Approved projects must be completed within six (6) months after issuance of a building permit or within six (6) months after approval by the ACC if no building permit is required. If the work is not completed within the prescribed time, the ACC may rescind its approval and re-submission will be required. The ACC may grant an extension for good cause. This Section 8.07 shall not apply to Declarant.

Section 8.08. Composition of the ACC. The ACC shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until the earlier to occur

of sixty (60) days after the Conveyance of 75% of the Lots that may be created to Owners other than Declarant, two (2) years after the last Conveyance of a Lot by Declarant in the ordinary course of business, or two (2) years after any right to add new Lots was last exercised, Declarant shall appoint the ACC. The power of the Declarant to "appoint," as provided in this Section 8.08, shall include without limitation the power to: initially constitute the membership of the ACC, appoint member(s) to the ACC upon the occurrence of any vacancy, and for whatever reason to remove any member of the ACC, with or without cause, at any time, and to appoint a successor; and each such appointment may be made for such term(s) of office, subject to the power of removal stated in this Section 8.08, as may be set from time to time in the discretion of Declarant.

Section 8.09. No Liability. None of Declarant, the Association or the ACC or its members shall be liable in damages to anyone submitting plans or specifications for approval under this Declaration arising out of or in connection with any action, failure to act, approval, disapproval or failure to approve or disapprove any matter within its jurisdiction under this Declaration. Any Owner submitting or causing to be submitted any plans or specifications agrees and covenants on behalf of such Owner and such Owner's heirs, successors, legal representatives and assigns that they will not bring any such action or suit at law or in equity against Declarant, the Association, the ACC or any of the members of those entities. Notwithstanding any other provisions in this Section 8.09, decisions concerning the approval or denial of an Owner's application for architectural or landscaping changes shall not be made arbitrarily or capriciously.

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

Section 8.11. Rules and Regulations. The ACC may, from time to time in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of Article 7.

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

Section 8.13. Review Fee and Address. Any plans and specifications shall be submitted in writing for approval together with a reasonable processing fee determined by the Board. The address of the ACC shall be the principal place of business of the Association or such other place as the ACC may from time to time designate to the Board of Directors. The address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the ACC shall be kept.

Section 8.14. Inspection. During initial construction, remodeling, repair or other work on a Lot or to a Residence requiring ACC approval, any member or agent of the ACC may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any Lot or Residence within the Subdivision to determine whether the Residence or Lot's improvement complies with the provisions of this Declaration.

Section 8.15. General Provisions. The members of the ACC shall not be entitled to any compensation for services performed under this Article 8. The powers and duties of the ACC shall cease and terminate upon the termination of this Declaration.

## **ARTICLE 9 ASSOCIATION WATER**

Section 9.01. Management of Association Water. To the extent permitted by law, the Association shall have the exclusive authority to allocate, deliver, manage and control the use of the Association Water, and shall own, operate, repair and maintain the Irrigation Facilities, as well as all drainage facilities and retention and detention areas. The Association's authority shall include (without limitation) the promulgation of rules, regulations, policies and procedures, not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand. The Irrigation Facilities shall include a meter to measure Association Water entering the Property. An initial irrigation schedule and narrative for the Subdivision is attached as Exhibit B and incorporated by this reference; all details of this schedule and narrative are subject to change by the Association at any time. If an Owner violates any provision of this Declaration or any rule or regulation promulgated hereunder related to Association Water or the Irrigation Facilities, the Association may restrict or terminate the delivery of Association Water to such Owner's Lot, in addition to any other rights the Association may have under this Declaration or at law. The Association also may restrict or terminate the delivery of Association Water to an Owner's Lot in the event of any emergency involving Association Water or the Irrigation Facilities.

Section 9.02. Retention Pond. Notwithstanding any other provisions in this Declaration, only upon the request of Mesa County, the Association shall uncap or open the gravity drain on the bottom of the retention pond (a schematic of which is attached as Exhibit C), cut power to the retention pond pump, and remove the pump.

Section 9.03. Easements for Ingress and Egress. Each Owner grants to the Association reasonable ingress and egress over, under and across all easements shown on the Map or any recorded plat of any portion of the Subdivision for the purpose of operating, repairing or maintaining Irrigation Facilities. No Owner shall construct, erect, or maintain any improvement or structure which shall interfere with the Association's ownership, operation, maintenance or repair of Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement that interferes with the ownership, operation and maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure.

Section 9.04. Irrigation Assessments. Any billings by any person or entity associated with Association Water shall be a Common Expense.

Section 9.05. Hazardous Drainage. Release of contaminants or hazardous materials, as defined in CERCLA, RCRA, FIFRA, the Toxic Substances Control Act, and any other applicable federal and state environmental laws, into the Property is prohibited.

Section 9.06. Maintenance and Water Assessments. Declarant and its successors and assigns shall maintain the Irrigation Facilities, drainage facilities, retention areas and detention areas, and pay all water assessments on Association Water until transfer to the Association; provided, however, that Declarant shall be reimbursed by the Association for all payments of water assessments paid by Declarant

under this Section 9.06. Upon the transfer to the Association, full responsibility for the Irrigation Facilities, drainage facilities, retention areas, detention areas and Association Water shall be borne by the Association, and all costs for electric service to the pump(s) shall be Common Expenses.

Section 9.07. Transfer to Association; Limitations. Not later than six (6) months after completion of the Irrigation Facilities (unless an earlier date is required by this Declaration), Declarant shall convey fee simple title in the Irrigation Facilities to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and title exceptions of record on the date of recording this Declaration. The Association Water consists of certain rights associated with Palisade Irrigation District, in which the Property is located, and Declarant is not responsible for availability of or restrictions upon this Association Water, which is governed and controlled by Palisade Irrigation District.

## **ARTICLE 10** **INSURANCE**

Section 10.01. Insurance. The Association shall obtain and maintain insurance as required by CCIOA (currently codified at C.R.S. § 38-33.3-313) and this Declaration.

Section 10.02. Type of Insurance. Commencing not later than the time of the first Conveyance of a Lot to an Owner other than Declarant, the Association shall obtain a master insurance policy insuring against damage to the Common Area. The master insurance policy insuring the Common Area shall be for broad form covered causes of loss, shall include the Owners as additional named insureds, and shall include (or the Association shall obtain separately) commercial general liability insurance with single limited coverage of not less than \$1,000,000.00, with \$500,000.00 medical payments coverage. In addition, if reasonably available, the Association shall maintain directors and officers liability insurance. The association, as attorney-in-fact, shall have the authority conferred upon it in Article 11 to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

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

Section 10.04. Waiver of Subrogation. The Association and Lot Owners each waive any and all rights of recovery against the other, their officers, members, agents and employees, occurring on or arising out of the use and occupancy of the Property to the extent such loss or damage is covered or indemnified by proceeds received from insurance carried by the other party, or for which such party is otherwise reimbursed. Each of the parties shall, upon obtaining the insurance required under this Declaration, notify the insurance carrier that the foregoing waiver of subrogation is contained in this covenant, and, to the extent available, shall require the insurance carrier to include an appropriate Waiver of Subrogation Provision in the policy.

Section 10.05. Fidelity Bond Insurance. If any Owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, a fidelity bond insurance in an aggregate amount equal to not less than two (2) months of current assessments, plus reserve calculated from the then-current budget of the Association.

Section 10.06. Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain a fidelity bond in the same amount required in Section 10.05, unless the Association names such a person as an insured employee in a contract of fidelity insurance described in Section 10.05. The Association may carry or require of an independent contractor employed to manage the Association fidelity bond coverage in an amount greater than that specified in this Section 10.06.

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

Section 10.08. Additional Insurance. The Association may carry any other insurance it considers appropriate to protect the Association or the members, including insurance on property it is not obligated to insure.

**ARTICLE 11**  
**DAMAGE OR DESTRUCTION OF COMMON AREA**

Section 11.01. Appointment of Association as Attorney-in-Fact. This Declaration constitutes each Owner's appointment of the Association as his or her attorney-in-fact to administer repairs, receive and apply insurance funds, and to ensure compliance with this Declaration upon the damage, destruction or obsolescence of the Common Area. Any grantee's acceptance of a Deed or other instrument rendering that person an Owner shall constitute the irrevocable appointment of the Association as the grantee's attorney-in-fact, to act with all the powers as provided in this Section 11.01.

Section 11.02. Rights of Association as Attorney-in-Fact. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authority, right and power to make, execute, and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers granted in this Declaration. Repair and reconstruction of the Common Area means restoring the same to substantially the same condition in which it existed prior to the damage. The obsolescence of the Common Area shall be determined by the Association, in its sole and absolute discretion. Except as otherwise provided in this Declaration, any insurance proceeds collected shall be paid to the Association for the purpose of repair, restoration, or replacement.

Section 11.03. Application of Insurance Proceeds. In the event of damage or destruction to any improvement installed by the Association within the Common Area due to an insured loss, the Association shall apply the insurance proceeds to the reconstruction and repair of the damaged improvement. If the insurance proceeds are insufficient, the Association may levy a Capital Assessment in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction, unless:

- (a) The planned community is terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (c) 67% of the Owners vote to not rebuild; or

- (d) Prior to the Conveyance of any Lot to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

Distributions of insurance proceeds shall be made to the Association unless made jointly payable to the Owners and first mortgagees of their respective Lots, if any. The Capital Assessment described in this Section 11.03 shall be a debt of each Owner and a lien on his or her Lot and the improvements on it, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

## **ARTICLE 12**

### **GENERAL PROVISIONS**

Section 12.01. Easements and Outlots. Easements for the installation and maintenance of utilities and irrigation, retention, detention and other water facilities are reserved as shown on the Map and the recorded plat(s) of the Subdivision. Within these easements no improvement, structure, planting or other material (excluding fences capable of being readily removed for the purposes of the easement) shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of such utilities or facilities, or that may change the direction of flow of drainage channels in the easements. Declarant and the Association shall have the right (but assume no obligation) to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 12.02. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 12.03. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Property and Lots, binding Declarant and all persons and entities claiming by, through or under it for a period of twenty (20) years from the date of recording of this Declaration in the real property records of Mesa County, Colorado, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided in Section 12.04.

Section 12.04. Termination and Amendment.

- (a) Subject to the provisions of C.R.S. § 38-33.3-217(1), (5), (6) and (7), all or any portion of this Declaration may be supplemented, changed or canceled in whole or in part at any time by the vote or agreement of the Owners of 67% of the Lots that may be created. Such agreement may be in any number of counterparts. Such amendment shall be effective when duly recorded in the real property records of Mesa County, Colorado.
- (b) Declarant reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation or the Bylaws at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, grammar, dates, typographical and clerical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.



Section 12.05. Rights of Declarant Incident to Construction. An easement is retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under, and across any easements shown on the Map, including but not limited to the right to store materials on such areas and to make such other use of such areas as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property, including without limitation construction of improvements indicated on the Map; 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 or her family members, guests or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns, retains a right to store construction materials on any Lot owned by Declarant and to make such other use of it as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations under this Declaration, and the sale of the Lots. Any Special Declarant Rights created or reserved in this Declaration for the benefit of Declarant may be transferred to any person or entity by an instrument describing the rights transferred, and shall be recorded in the real property records of Mesa County, Colorado. The rights of Declarant reserved in this Section 12.05 shall expire fifteen (15) years after the recording of this Declaration.

Section 12.06. Maximum Number of Lots. Declarant reserves the right to create a maximum of fifty-six (56) Lots in the Subdivision, in addition to the Common Area.

Section 12.07. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void. Any managing agent, employee, independent contractor or other person acting on behalf of the Association shall be subject to CCIOA to the same extent as the Association itself would be under the same circumstances.

Section 12.08. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions which shall remain in full force and effect. To the extent feasible, any non-complying provision and the remainder of this Declaration shall be reformed to comply with applicable law and to preserve the intent of this Declaration, including the invalidated provision.

Section 12.09. Waiver. The failure of Declarant, the Association or any Owner to enforce any right under this Declaration upon any occasion shall not be deemed a waiver of such right on any subsequent occasion(s). The waiver, either express or implied, by Declarant, the Association or any Owner of any of the rights, terms or conditions in this Declaration shall not be deemed as or constitute a waiver of any other rights, terms or conditions in this Declaration. Any waiver, in order to be valid and effective, must be in writing.

Section 12.10. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the real property records of Mesa County, Colorado by which that Owner took title and to the street address of that Lot, if any.

Section 12.11. Section Headings. The article and section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

