

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
FOX MEADOWS SUBDIVISION**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FOX MEADOWS SUBDIVISION is made and entered into by GRAND JUNCTION REAL ESTATE INVESTMENTS, LLC a Colorado limited liability company ("Declarant").

**RECITALS**

A. Declarant is the owner of all that certain real property in the County of Mesa, State of Colorado, platted as Fox Meadows as recorded with the Mesa County Clerk and Recorder (the "Plat").

B. Declarant desires to subject and place upon the above-described property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions.

C. A common interest community may be created pursuant to the Act (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

**ARTICLE I  
DEFINITIONS**

1. "Act" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

2. "Agencies" collectively means the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

3. "Allocated Interests" means the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest of each Lot shall be equal to a fraction,

the numerator of which is one (1) and the denominator of which is the total number of Lots then within the Common Interest Community.

4. "Association" means Fox Meadows Homeowners Association, Inc., a nonprofit corporation unit owners association organized under §38-33.3-301 of the Act.

5. "Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, and in the Bylaws of the Association, to act on behalf of the Association.

6. "Builder" means any Member other than Declarant who acquires (or has acquired prior to the annexation to this Declaration) one or more Lots for the purpose of constructing one or more Lots thereon, and who is designated as a Builder by Declarant in the sole discretion of Declarant from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument duly recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado.

7. "Common Elements" means any real estate owned or leased by the Association other than a Lot, all real property contained in Tracts (including the improvements thereto, and specifically including the irrigation, detention and drainage systems within the Tracts) as shown on the Plat, owned by the Association for the common use and enjoyment of all or any portion of the Lot Owners.

8. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot.

9. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

10. "Community" means the Fox Meadows community real estate described on the Plat, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Lot, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. The Community is a planned community under the Act.

11. "Declarant" means the undersigned, and any other Person or group of Persons acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any Special Declarant Right.

12. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and any other recorded instruments, however denominated, that create this Community,

including any amendments to those instruments and also including, but not limited to, plats and maps.

13. "Design Review Committee" or "DRC" means the committee appointed by the Declarant or by the Association to review requests for architectural approval and make recommendations to the Board of Directors for their approval or disapproval, as more fully provided in this Declaration.

14. "Development Rights" means any right or combination of rights reserved by a Declarant in this Declaration to:

- (a) Add real estate to the Community;
- (b) Create Lots within the Community;
- (c) Subdivide Lots; or
- (d) Withdraw real estate from the Community.

15. "First Security Interest" means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and governmental special assessments).

16. "Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

17. "Lot" means any separate numbered lot or plot of land shown upon any recorded subdivision map of the Community, or any portion thereof, and on which has been or is planned to be constructed an attached or detached residential dwelling.

18. "Member" means each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

19. "Owner" means the Declarant, a Builder, or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. The Declarant is the owner of each Lot provided for in this Declaration until that Lot is conveyed to another Person who may or may not be a Declarant.

20. "Period of Declarant Control" means a length of time expiring twenty (20) years after initial recording of this Declaration in the books and records of the Clerk and Recorder of

Mesa County, Colorado; provided, that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than a Declarant, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two (2) years after any right to add new Lots to the Declaration was last exercised.

21. "Person" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or any combination thereof.

22. "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of notice of cancellation or substantial modification of certain insurance policies under Article VI, Section 2. hereof, "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of Mesa County, Colorado, show the Administrator as having the record title to the Lot.

23. "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest or any successor to the interest of any such Person under such Security Interest.

24. "Special Declarant Rights" means rights reserved for the benefit of a Declarant to perform the following acts: To build and complete Improvements in the Community, including up to thirty-seven (37) Lots; to exercise any Development Right; to maintain sales offices, construction offices, management offices, signs advertising the Community and sale of Lots, and models; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any member of the Board of Directors during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically on the earlier of the following events:

(a) conveyance of the last Lot by Declarant to an Owner other than Declarant;  
or

(b) twenty (20) years from the date of recordation of this Declaration, except with respect to the appointment of officers and directors which may only be exercised in accordance with Article III hereof.

25. "Supplemental Declaration" means a written, recorded instrument, including without limitation a condominium declaration, containing covenants, conditions, restrictions, reservations, easements, or equitable servitudes, or any combination thereof, which affects any portion(s) of the Community.

## ARTICLE II MEMBERSHIP AND VOTING RIGHTS

1. Membership. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

2. One Class of Membership. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Lot owned in accordance with the Allocated Interest attributable to such Lot, except that no votes allocated to a Lot owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total of all Lots then existing within the Community. Except as otherwise provided in Article III of this Declaration, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint and remove all officers and members of the Board of Directors which have been appointed by such Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

## ARTICLE III MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS

1. Authority of Board of Directors. Except as provided in this Declaration or the Association Bylaws, the Board of Directors may act in all instances on behalf of the Association.

2. Election of Board of Directors During Period of Declarant Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Owners other than a Declarant or a Builder, at least one ( 1 ) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than the Declarant or a Builder. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Owners other than a Declarant or a Builder, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant or a Builder.

3. Authority of Declarant: Termination of Period of Declarant Control. Except as otherwise provided in this Article III, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and remove all officers and directors of the Board of Directors appointed by it. After the termination of the Period of Declarant Control, the Owners must elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. The members of the Board and officers shall take office upon election.

4. Delivery of Documents by Declarant. After the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Association all books and records of the Owners and of the Association held by or controlled by the Declarant, if and as required by the Act.

5. Rules and Regulations. Rules and Regulations concerning and governing the Lots, Common Elements, and/or this Community may be adopted, amended or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such Rules and Regulations.

6. Budget. Within thirty (30) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the members and shall set a date for a meeting of the members to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the vote of sixty-seven percent (67%) of the Allocated Interests rejects the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the members must be continued until such time as the members ratify a subsequent budget proposed by the Board of Directors.

7. Indemnification. To the fullest extent allowed by law the Association shall indemnify and hold harmless the individual directors and officers of the Association from any and all claims, demands or causes of action, including but not limited to attorneys fees and costs incurred in their defense, related to or arising out of the performance of their official duties.

#### ARTICLE IV COVENANT FOR ASSESSMENTS

1. Personal Obligation for Assessments. Each Owner, including Declarant and each Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration, with such assessments and other amounts to be established and collected as hereinafter provided. 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 when due without notice or demand (except as otherwise expressly provided in

this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot. Each assessment, together with interest, late charges, costs, and reasonable attorneys fees, shall also be the personal obligation of the 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 to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Lot for assessments 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.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of incorporation or Bylaws of the Association, or by law; provided, however, that such assessments levied during the period of Declarant Control may not be used for the purpose of constructing capital improvements. The Association shall be responsible for the maintenance and repair of any private streets, mitigation berms, swales for drainage, drainage detention facilities and pedestrian/bike paths.

3. Initial Annual Assessment.

(a) Until commencement of the second annual assessment period, the maximum annual assessment shall be three hundred Dollars (\$300.00) per Lot.

(b) Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment against each Lot shall be increased effective each Association fiscal year by the greater of: (i) ten percent (10%); or (ii) in conformance with the rise, if any, of the Consumer Price Index published by the U.S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for All Urban Consumers (1967 - 100), for the one (1) year period ending on the last day of October of the prior year. The aforesaid annual increase in the maximum annual assessment shall occur automatically upon the commencement of each Association fiscal year without the necessity of any action being taken with respect thereto by the Association. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then if the increase in the maximum annual assessment is to be computed by reference to the Consumer Price Index, as provided herein, such calculation shall be made by using a substantially comparable index designated by the Board of Directors of the Association.

(c) Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment may be increased by a vote of the Members over the amount established by the applications of the provisions of 3(b) above for the next succeeding Association fiscal year and at the end of that year, for each succeeding Association fiscal year, provided that any such increase shall have the assent of no less than

sixty-seven percent (67%) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of such meeting setting forth the purpose therefore.

(d) The Board of Directors of the Association may, at any time and from time to time, after consideration of the projected maintenance costs and the other financial needs of the Association, fix the actual assessment against each Lot at an amount less than the maximum assessment for any Association fiscal year.

(e) Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget shall be ratified, whether or not a quorum of members is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(f) The limitations contained herein shall not apply to any change in the maximum, actual and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(g) The Association shall maintain an adequate reserve fund out of the annual assessments for the repair and replacement of those elements of the Common Element that must be repaired or replaced on a periodic basis.

4. Rate of Assessment. Annual and special assessments shall be set at amounts sufficient to meet the expected needs of the Association. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles. Except with regard to assessments for Limited Common Elements or otherwise assessed against fewer than all owners as provided in this Declaration, all Common Expenses shall be assessed against all the Lots in accordance with the Allocated Interests set forth in this Declaration.

5. Date of Commencement of Annual Assessments. Until the Association makes an annual assessment, which shall commence at such time as the Board of Directors may determine in its discretion, the Declarant shall pay the expenses of the Association. After any annual assessment has been made by the Association, annual assessments shall initially not be greater than the amount set forth in Section 3(a) of this Article, and thereafter shall be based on a budget adopted by the Association as provided above. A budget shall be so adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its



discretion from time to time, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a pro rata share of the last payment due.

6. Special Assessment. In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of Members casting at least sixty-seven percent (67%) of the Member votes cast at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of property for which the Association has repair and/or reconstruction obligations including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed improvements, or for the finding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Lot in accordance with the Allocated interests set forth in this Declaration; provided, however, that any costs incurred by the Association with regard to Limited Common Elements or as a result of negligent, reckless or willful actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by the Owner of the affected Units. Notice in writing in the amount of such budgeted Special Assessments and the time for payment of the Special Assessments shall be in accordance with Section 6 hereof. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 7 of this Article. Notwithstanding the foregoing, special assessments levied during the Period of Declarant Control may not be used by Declarant for the purpose of constructing capital improvements.

7. Notice and Quorum for any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast sixty percent (60%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8. Lien for Assessments.

(a) The Association has a statutory lien on a Lot for any assessment levied against that Lot or fines imposed against its Owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Article from the time such items become due. 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.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the

Board of Directors or managing agent of the Association may prepare, and record in the books and records of the Clerk and Recorder of Mesa County, Colorado, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

9. Priority of Association Lien.

(a) A lien under this Article is prior to all other liens and encumbrances on a Lot except:

i. Liens and encumbrances recorded before the recordation of the Declaration;

ii. A First Security Interest on the Lot, 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.

(b) A lien under this Section is also prior to the First Security Interests described in the preceding subsection (a)(ii) to the extent of an amount equal to the Common Expense assessments based on a periodic budget adopted by the Association as provided above, 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 of an action or a non-judicial foreclosure either to enforce or to extinguish the lien.

(c) This Section does not affect the priority of mechanics or materialmen's liens or the priority of liens for other assessments made by the Association. To the fullest extent allowed by law, a lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended.

10. Assessments/Charges for Services to Separate Areas of Community. The Association may, at any time from time to time, provide services to any portion of the Community, including but not limited to maintenance of private road tracts, shared driveways, easements or common elements serving and benefitting specific Lots rather than the entire Community. Any such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lots for which such service is to be provided, with such agreement to include a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services, and which amounts shall include overhead expenses of the Association. Services which may be provided by the Association pursuant to this Section include, without limitation, (a) the construction, care, operation, management, maintenance, repair, replacement and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions to such area, such as

trash removal; (c) the enforcement of the provisions of any Supplemental Declaration or any other document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; or (e) the procurement of insurance for Owners.

11. Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security interest or its designee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, 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 of Directors, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their 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. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

12. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof may 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 Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, without limitation, in a foreclosure action, such judgment or decree shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges, as above provided. Each Owner is liable for assessments made against such Owner's Lot during the period of ownership of such Lot. No Owner may be exempt from liability for payment of any assessment by abandonment of the Lot against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

13. Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves, shall be retained by the Association as reserves and need not be credited to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future assessments.

14. Other Charges. The Association may levy and assess charges, costs and fees for the following matters, among others, in order to pay or reimburse the Association for costs and expenses incurred by or on behalf of Owner(s) from time to time, including without limitation reimbursement for charges to the Association by its managing agent or other Person(s): copying of Association documents or other documents; return check charges; charges for telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; charges for notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). The amount of such charges, costs, fees and expenses shall be set by the Board of Directors from time to time, shall be in addition to the assessments levied by the Association,

and shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments.

15. Assessments for Misconduct. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that Common Expense exclusively against such Owner and his Lot.

16. Fines. The Lots, Owners, and residents of any Lot, shall be subject to fines for violation of this Declaration, the Articles of Incorporation or Bylaws of the Association, or any other rule, regulation, restriction, requirement or other provision duly adopted by the Board of Directors. The Fine Policy of the Association shall be as adopted by the Board of Directors from time to time, except that the initial Fine Policy of the Association shall be as attached to the Bylaws of the Association upon the initial adoption and execution thereof by the Board of Directors. All fines shall be in addition to the assessments levied by the Association, from time to time, and shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments, including without limitation lien rights, interest, late Charges and attorneys' fees.

#### **ARTICLE V DESIGN REVIEW COMMITTEE**

1. Composition of DRC. The DRC shall consist of three (3) or more persons appointed by the Board of Directors; provided, however, that until all of the Lots have been conveyed by Declarant to the first Owner thereof (other than Declarant or a Builder), Declarant shall appoint the DRC. The power to "appoint," as provided herein, shall include without limitation the power to: constitute the initial membership of the DRC; appoint member(s) to the DRC on the occurrence of any vacancy therein, for whatever reason; and remove any member of the DRC, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointer. The terms of office of all then-current members of the DRC who were appointed by the Declarant shall automatically expire at the time of conveyance by the Declarant of all Lots to the first Owner thereof (other than Declarant or a Builder).

2. Review by DRC. No structure, attachment to a structure, building, fence, wall, canopy, awning, roof, exterior lighting fixture, athletic facility, or other similar improvements or attachments, shall be constructed, erected, placed or installed upon the Property and no alteration of the material or appearance (including color) of the exterior of a residence or other structure shall be made, and no change in the grade of any Lot shall be performed, unless copies of plans and specifications therefore (said plans and specifications to show exterior design, height, colors, materials, location of the structure or addition to the structure and drainage, as well as such other materials and information as may be required by the DRC) shall have been first submitted to and approved in writing by the DRC. The plans and specifications so submitted shall comply in all respects with the applicable building and zoning regulations of the City of Grand Junction, County of Mesa, and with the drainage, flood, slope and USGS stability mitigation measures and restrictions established by the applicable site plan approved by the City of Grand Junction. The

DRC shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to residences, other structures, 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 DRC may require that the applicant(s) pay the DRC a processing fee for the actual expenses incurred by the DRC in the review and approval process. Such amounts, if any, may be levied as part of the common expense assessment against the Lot for which the request for DRC 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, no Owner shall have the right to materially alter or modify the original fencing, landscaping improvements or grading installed by Declarant as a Common Element; provided, however, that the foregoing prohibition shall not prevent the repair and maintenance of the same so long as the repair or maintenance restores such items to their original condition. All improvements shall meet or exceed the standards set forth in the Fox Meadows Architectural Guidelines as may be adopted and published by the DRC which may be amended by the DRC at its discretion. The subdivision plat for the Property contains notes and conditions regarding building envelopes, setbacks, drainage facilities, rock slide berms, dwelling types and height, all of which are incorporated herein by this reference.

3. Procedures. The DRC 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 which the DRC may require in conjunction therewith. Complete submission shall be deemed to have occurred upon written notice by the DRC that it has received all the required materials. In the event that the DRC fails to approve or disapprove any request within thirty (30) days after the complete submission of all plans, specifications, materials and other information with respect thereto, or the DRC does not exist, approval shall not be required and this Article shall be deemed to have been fully complied with.

4. Vote. A majority of the DRC is required to approve a request for approval pursuant to this Article.

5. Prosecution of Work After Approval. After approval of a request for architectural approval, the work to complete the same shall be accomplished as promptly and diligently as possible and in complete conformity with the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or to complete the Improvement in accordance with the description and materials furnished to the Committee, and in accordance with the conditions imposed by the DRC with such approval, shall constitute a violation of this Article.

6. Notice of Completion. After completion of a proposed Improvement, the applicant for architectural approval shall give a written Notice of Completion to the Committee. Until the date of receipt of such Notice of Completion, the DRC shall be deemed to have notice of completion of any Improvement on which approval has been sought and granted as provided in this Article.

7. Inspection of Work. The DRC or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion of the same in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article. However, unless the Committee expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with the approval therefor, no such conformance shall be implied from inspection of the Improvement either during the work or after completion thereof.

8. Notice of Non-Compliance. If, as a result of inspections or otherwise, the DRC finds that any Improvement has been done without obtaining the approval of the DRC, or was not done in substantial compliance with the description and materials furnished to, any conditions imposed by, the Committee, or was not completed within the required time period, the DRC shall notify the Board of Directors and the applicant thereof in writing of such noncompliance. Such Notice of Noncompliance shall be given, in any event, within sixty (60) days after the DRC receives any Notice of Completion from the applicant as provided above. Such Notice of Non-compliance shall specify the particulars of the non-compliance, shall require the applicant to take such action as the Committee or the Board may deem necessary or appropriate to remedy the non-compliance, and such Notice of Non-compliance, or a memorandum thereof, may be recorded against the Lot on which the non-compliance exists.

9. Correction of Non-Compliance. If the Committee determines that a noncompliance exists and the Committee gives its Notice of Non-compliance, all as above provided, the applicant who received such notice shall remedy or remove such noncompliance within a period of not more than forty-five (45) days from the date of the giving of such Notice of Noncompliance. If the applicant fails for any reason to correct the noncompliance, as aforesaid, then the Board of Directors may, at its option, record a Notice of Noncompliance against the Lot on which the noncompliance exists, if such notice was not previously recorded. In addition, the Board and/or the Committee and/or any Owner shall have whatever remedies may be available to each of them at law or in equity.

10. Architectural Standards. After expiration of the period of Declarant control, the Board of Directors, with the advice of the DRC, may, at any time from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards to interpret and implement the provisions of this Article including, without limitation, those relating to the procedures, materials to be submitted, specifications of items, types or kinds of Improvements which will or will not be approved by the DRC, and additional factors which may be taken into consideration in connection with the DRC's consideration of any request for architectural approval. Any architectural standards so adopted by the Board shall be consistent, and not in conflict, with this Article and the Design Guidelines referenced above.

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

12. Liability. Neither the Board of Directors nor the DRC, nor any members thereof; shall be liable in equity or damages to any person submitting requests for approval or to any

Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder.

13. Appeals. An owner has the right to appeal any decision made by the DRC. All appeals shall be submitted in writing to the Board of Directors. The appeal will then be reviewed and the owner will receive a written response within fifteen (15) days. The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof. Any applicant for a variance is obligated, where required by the City of Grand Junction (the "City"), to receive approval from the City as well as the Board.

14. Waiver. The approval or consent of the Board of Directors 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 Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

## ARTICLE VI INSURANCE

1. Insurance. The Association shall maintain the following types of insurance on the Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then- existing requirements of any of the Agencies with respect to their insurance, guaranty; or purchase of Security Interests.

(a) Property insurance for broad form covered causes of loss; except that the total amount of insurance must not be less than the full insurable replacement cost of all insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors. The Owners shall also be included as additional insured's but only for claims and liabilities arising in connection with the ownership, existence, use or management of

the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, Owners, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who controls or disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) If any of the Common Elements are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

i. the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

ii. one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

(e) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature, or on such other property, as the Board of Directors deems appropriate from time to time, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30)



days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any such shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

3. Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, shall be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the parties sharing in a joint duty of repair and maintenance, or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question, in such amounts as the Board of Directors may deem appropriate, and the Association may collect the amount(s) from said Owner(s) in the same manner as any assessment.

4. Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and holders of Security Interests as their interests may appear. Subject to the provisions of Section I of Article VII of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

5. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment.

6. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under

the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of delegates, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

7. Insurance to be Maintained by Owners. Unless otherwise expressly provided in this Declaration, an insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the Improvements thereon, as well as on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.

8. Notice of Cancellation. If the insurance described in Section I of this Article is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

## ARTICLE VII DAMAGE OR DESTRUCTION

### 1. Damage or Destruction.

(a) Any portion of the Community for which insurance is required under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- i. The Community is terminated;
- ii. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- iii. Eighty percent (80%) of the Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild; or
- iv. Prior to the conveyance of any Lot to a Person other than the Declarant, the Security Interest Holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

Cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the

proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liability of all the Lots.

2. Lots. Any damage to or destruction of any structure located on a Lot shall, except as hereafter provided, be promptly repaired and reconstructed by the Owner thereof using insurance proceeds and personal funds of such Owner. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a residence located on a Lot shall be destroyed or so damaged that the residence is no longer habitable, then the Owner of such Lot shall, within a reasonable time not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the residence or demolish the same. Demolition of a residence shall include removal of any foundation slab, basement walls and floors, regrading of the Lot to a level condition, and the installation of such landscaping as may be required by the DRC pursuant to a plan submitted to and approved by said Committee. If the Owner of a Lot does not either commence repair, reconstruction or demolition activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Committee, then the Association may, in its reasonable discretion, after providing the notice required in Article VIII, Section 2 hereof, enter upon the Lot for the purpose of demolishing the residence and then landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be subject to all the terms and provisions applicable to assessments as provided in Article IV hereof, including without limitation, interest, late charges and lien rights.

## ARTICLE VIII

### MAINTENANCE

1. General.

(a) Maintenance, repair and replacement of the Common Elements and all Improvements located thereon, and any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association. The Association reserves the right to grant the maintenance responsibility of the Limited Common Elements for the benefit of any Lots (the "LCE Maintenance Area") to the Owners of such Lots, and the Lot Owners are obligated to accept said maintenance responsibility. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner. No Owner shall make any addition or other alteration to any portion of the Common Elements without the express consent of the Association. Further, the Association may provide such other maintenance and repair as the Board of Directors may determine in its discretion from time to time, including, without limitation, publicly-dedicated property and Improvements located thereon (such as street medians, cul-de-sac landscaping, landscape tracts, other landscaping, trails, fences, and off-street parking). The costs to be expended for the maintenance,

repair, replacement and servicing described in this Section shall, subject to Section 4 of this Article, be collected by the Association as assessments pursuant to Article IV hereof.

(b) In addition to the foregoing, the Association shall maintain, repair and replace all Common Element fencing, if any, which has been installed by the Declarant, and by the Declarant on or adjacent to arterial and collector roads, shall maintain, repair and replace storm water facilities including drainage ponds, level spreaders and outfall structures; rock slide berms; the irrigation systems; parking courtyards and driveways; walkways not in the public right of way and play areas not maintained by the City of Grand Junction. All snow removal shall be accomplished without the use of salt based snowmelt on concrete surfaces.

(c) The maintenance, repair and replacement of each Lot, and the Improvements thereon, shall be the responsibility of the Owner of such Lot.

2. Association's Right to Repair, Maintain, Restore and Demolish. In the event any Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or restoration or, pursuant to Article VII, Section 2 hereof, to demolish a residence. The cost of such maintenance, repair, reconstruction and/or demolition shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to "assessments" as provided in Article IV hereof, including, without limitation, interest, late charges and lien rights. Any damage occurring to such Lot or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the Association.

3. Access Easement. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner's Lot reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or Improvements maintained, repaired or replaced by such Person(s). If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot through which access is taken, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot, except that no such notice shall be required of the Association in connection with any fence or landscape maintenance, repair and replacement, and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to such easements as provided for in this Section.

4. Owner's Misconduct. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common

Elements, any other property, or any Improvements located thereon, is caused by the misconduct of any Owner, or by the misconduct of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Person(s) under the laws of the State of Colorado and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article N of this Declaration. A determination of the misconduct of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefore, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

#### **ARTICLE IX GENERAL RESTRICTIONS**

1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Community.
2. Restrictions Imposed. This Community is subject to the easements, licenses and other matters of record from time to time. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.
3. Residential Use. Subject to Section 4 of this Article IX, Lots shall be used for residential use only, including rental, and including uses which are customarily incident to any of the foregoing, but such residential use shall exclude uses (other than the foregoing) which are for business, commercial or professional purposes; provided, however, that an Owner may use his Unit for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Lots is created thereby.
4. Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, as well as any Builder (but only with the express written consent of the Declarant), to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, locating, maintaining and relocating management offices, signs, model Lots and sales offices, in such numbers, of such sizes, and at such locations as it determines in its reasonable discretion from time to time. Further, nothing contained in this Declaration shall limit the rights of Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements on any property (with the consent of the Owner thereof) as a construction,

management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or (c) to require Declarant to seek or obtain the approval of the DRC, the Board of Directors, or the Association for any such activity. Any real estate used as a sales office, management office, or a model, shall be a Lot.

5. Household Pets. 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 up to two (2) dogs, cats, and fish or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident(s). An Owner's right to keep household pets shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such Owner's Pet(s) and shall comply with the provisions of applicable law. All pets must be controlled on a leash or contained so that they do not become a nuisance and do not run at large or endanger or harass people, animals or pets.

6. Temporary Structures; Unsightly Conditions; Accessory Buildings. Except as herein provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located as to be visible from a street or from any other Lot.

7. Miscellaneous Improvement Restrictions.

(a) No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale" or "For Rent" sign not to exceed five (5) square feet and except for political signs, and flags complying with §38-33.3-106.5, C.R.S.; notwithstanding the foregoing, signs, advertising, or billboards used by the Declarant or its designees in connection with the sale or rental of Lots, or otherwise in connection with any development of the Property, shall be permissible, provided that such use by the Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, the Common Elements, or with such Owner's ingress or egress from a public way to the Common Elements or his Lot. All signs shall be permitted pursuant to the City of Grand Junction regulations. All other signage shall be reviewed by the DRC.

(b) No clotheslines, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot.

(c) Except as may otherwise be permitted by the DRC, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type, shall be placed, erected or maintained on any Lot, except inside a residence or

otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antenna" which are specifically covered by the Telecommunications Act of 1996, as amended from time to time, or regulations adopted there under. As to "antenna" which are specifically covered by the Telecommunications Act of 1996, as amended, or regulations adopted there under, the Association shall be empowered to adopt rules and regulations governing the types of "antenna" that are permissible and, to the extent permitted by the Telecommunications Act of 1996, as amended, or regulations adopted there under, establishing reasonable, non-discriminatory restrictions or requirements relating to appearance, safety, location and maintenance.

(d) No fences shall be permitted except for six foot (6') vinyl privacy fencing the design and location of which shall require the approval of the DRC. The Owners of each Lot adjacent to each such vinyl Lot boundary fence shall each be responsible for fifty percent (50%) of the costs of construction of such fence(s).

(e) No wind generators of any kind shall be constructed, installed, erected or maintained on a Lot.

(f) Any exterior lighting installed or maintained shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

(g) No wood shake roofs shall be permitted on any structure. All roofs on structures shall be at least 5/12 pitch, and roofs shall be designed to have multiple gables and or hip design and structures. Roof shingles shall be of architectural design level asphalt or other composite materials. All residences shall have gutters and downspouts.

(i) Maximum structure heights shall be no higher than allowed by the applicable land use, development and zoning standards of governmental departments with jurisdiction over the Community. The ground floor area of a single level residence shall not be less than 1,400 square feet, and the square footage of a two level residence shall not be less than 1,500 square feet. Building size is exclusive of open porches, open patios, and garages, and unfinished areas. Each residence shall have a garage built to hold no fewer than two (2) automobiles. Exteriors of residences and other approved structures shall contain no less than thirty-two (32) square feet of brick or stone on its front side (facing the street of its address) and the remainder of the front and sides of the residence shall be stucco of natural or subtle color tones.

(j) No manufactured housing, mobile home, modular home, trailer home, or other movable structure shall be permitted on a Lot, regardless of quality.

(k) All driveways and parking pads shall have a concrete surface.

8. Vehicular Parking. Storage and Repairs.

(a) Outdoor parking of recreational vehicles, boats, trailers, and campers is permitted; provided that the Owner shall store such items within fencing as, and to the extent, required DRC so as to not extend above the fence and be readily visible from other Lots or streets. These restrictions, however, shall not restrict trucks or other commercial vehicles which are necessary for on-site construction, maintenance, repair or replacement of any property in the Community, or any Improvements located thereon; nor shall such restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on any Lot or parked or stored elsewhere in such a manner as to be visible from any Lot. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein or which is not then currently licensed and registered; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness, shall not be deemed to be abandoned.

(c) In the event the Association shall determine that a vehicle is parked or stored in violation of subsections (a) or (b) of this Section, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

(e) Without limiting any of the aforesaid provisions of this Section, the Association shall have the right, at any time from time to time, to promulgate, enact, adopt, amend, repeal, reenact and enforce restrictions, requirements or other regulations having to do with parking of vehicles, except that the Association has no right or jurisdiction to regulate or control parking on a public street.

9. Nuisances. No nuisance shall be permitted which is visible within or otherwise affects the Community nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs the resident of any Lot or which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its



residents. As used herein, the term "nuisance" shall not include any activities of Declarant or a Builder which are reasonably necessary to the development and construction of, and sales activities on, the Lots; provided, however, that such activities of the Declarant or a Builder shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, or with any Owner's ingress and egress to or from his Lot and a public way. No noxious or offensive activity shall be carried on, nor shall anything be done or placed which is or may become a nuisance or cause embarrassment, disturbance or annoyance to person(s) in the Community. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Community any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

10. No Hazardous Activities. No activities shall be conducted in the Community, or within Improvements constructed thereon, 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 and no open fires shall be lighted or permitted except in a contained Lot while attended and in use or within an interior fireplace, or except such campfires or picnic fires on property which may be designated for such use by the Association. Further, any hazardous activity which may affect any portion of the Community is prohibited.

11. No Annoying Lights. Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Further, no annoying light, sound or odor which may be seen, smelled or heard from any Lot, shall be permitted.

12. Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot unless placed in a suitable container suitably located solely for the purpose of garbage pickup or composting. Further, no trash or materials shall be permitted to accumulate in such a manner so as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. The Association shall have the right to (a) select a single trash collection contractor for the entire Community to limit the number of collection vehicle traffic, and (b) mandate participation in a recycling trash removal program applicable to the entire Community contracted for by the Association.

13. Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is an unintentional violation of not more than four (4) feet beyond the required setback lines or Lot lines. This

provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

14. Lots to be Maintained. Each Lot shall at all times be kept in clean, sightly and wholesome condition by the Owner of the Lot. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 12 of this Article.

15. Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, as along as all leases provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of the City of Grand Junction Codes and Ordinances, this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under such lease.

16. Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

17. Maintenance of Grade and Drainage: Easements for Drainage and Utilities.

(a) Each Owner shall maintain the grading and drainage hazard mitigation upon his Lot, and the Association shall maintain the grading and drainage hazard mitigation upon the Common Elements, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with the established drainage pattern over any such real property, from adjoining or other property. Construction of improvements outside the established building envelopes is prohibited. In the event that it is necessary or desirable to change the established drainage over any Lot or Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the DRC for its review and approval, in accordance with the provisions of Article V of this Declaration. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Lot is completed.

(b) Easements for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded plats, as amended, affecting the Lots, or as established by any other instrument of record. As more fully provided above in this Section, no Improvements shall be placed or permitted to remain on any Lot, nor shall any change in grading be permitted to exist, which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right at any time to enter in and upon each five-foot rear and side yard drainage

easement, and at any time to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

18. Use of Common Elements. An easement is hereby granted to the Declarant and Builders on, over and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights. Subject to the immediately preceding sentence:

(a) No use shall be made of the Common Elements (including, without limitation, Tracts A, B and C shown on the Plat) which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Elements nor shall any such use unreasonably interfere with any dedicated purposes of such Common Elements set forth on the Plat and/or described in Easement Grants.

(b) No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Elements to all Members, nor shall any Owner place any structure whatsoever upon the Common Elements.

(c) The use of the Common Elements shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors.

(d) No use shall ever be made of the Common Elements which will deny ingress and egress to those Owners having access to their Lots only over Common Elements, and the right of ingress and egress to said Lots is hereby expressly granted.

19. Landscaping. Within the time frames as hereinafter provided, the Owner (other than Declarant or a Builder/Developer) of each Lot shall install landscaping on all of the Lot which is not covered by a building or building Improvement, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. The Owner of each Lot (other than Declarant or a Builder/Developer) shall install landscaping on such Lot within one hundred eighty (180) days after acquisition of such Lot by such Owner if said time period occurs between April 1 and October 1; if said time period does not occur between such dates, then such landscaping shall be installed by such Owner by the following October 1. Landscaping plans and other required documents shall be sufficiently accurate and complete to allow for review and approval, and to allow for determination of compliance with the landscaping, as installed, with that contained in the plan. Landscaping plans shall be submitted to the DRC for review (with approval or disapproval to be decided by the Board of Directors); and the approval of the same shall be obtained prior to the installation of landscaping, except where installed by the Declarant. If any Owner fails to comply with this Section, or with the requirements of the Board of Directors in installation of landscaping, the Association may, at the direction of the Board of Directors, enter upon such Lot and install or maintain landscaping for which the Owner shall be obligated to pay, in accordance with and subject to the provisions of Article VIII, Section 2 hereof. All Common Element landscaping shall be maintained by the Association.

20. Lot Line Adjustments. The Declarant hereby reserves, as a Special Declarant Right in order to build and complete Improvements in the Community, the right to move any Lot line(s) with the consent of the Owner(s) of each Lot whose Lot line is being moved. Such Lot line adjustments may be done by the Declarant, if at all, for the purpose of accommodating Improvements which are constructed or are to be constructed, and shall not change the number of Lots in the Community at the time such Lot line adjustment is approved by the applicable governmental entity. This Special Declarant Right shall terminate automatically as provided in Article I, Section 26 of this Declaration.

21. Easement for Encroachments. To the extent that any Lot or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists.

22. Irrigation Water. The Declarant will install main irrigation lines to the rear boundary of each Lot, and the Owner of such Lot will be responsible for the design, installation of all irrigation facilities and structures within the Lot, and the costs thereof. The Association reserves the right to obtain and provide irrigation water for the Community.

23. Drainage. Release of contaminants or hazardous materials into the Fox Meadows Subdivision drainage is prohibited. Established drainage grades shall not be disturbed by the Lot owners.

24. Geotechnical Requirements. Prior to commencement of the construction of any improvements the Owner of such proposed improvements shall comply with all applicable requirements of the City of Grand Junction relative to engineered foundations and Lot drainage.

25. Construction Period Regulations. In the best interest of all Owners and their contractors, the following regulations shall be enforced during the construction period of Improvements within Fox Meadows. These regulations shall be a part of the construction contract document specifications for each Improvement and all contractors and Owners shall abide by these regulations. Upon request by Declarant, a contractor may be required to go to the construction site with a representative of Declarant before work begins.

(a) Construction Trailers, Sheds or Temporary Structures. Use of construction shelters must be approved in writing by the Board prior to installing them on the site, as well as their size, configuration and location. All temporary structures shall be removed immediately after the occupancy permit issuance.

(b) Excavation. Excess excavation material shall be stored within a snow fenced area, may be stored on site no longer than two (2) weeks before it must be removed from the site. It shall not be placed in common areas, roads or other Lots in Fox Meadows property. Excavation, except for utility trenching, shall be limited to the Owner's Lot.

(c) Debris and Trash Removal. Daily cleanup of the construction site is mandatory and is the contractor's responsibility. If the contractor has been requested to remove the construction debris or trash and this is not done, the Association may have it removed and

bill the contractor for all costs incurred. Burning of trash or construction debris on site is prohibited.

(d) Storage of Construction Material, Trash, and Equipment. Storage areas shall be fenced according to approved "construction limits" areas designated on the approved site plan. The contractor will be responsible for maintaining and storing construction materials, covered trash containers, trash and equipment in these areas.

(e) Chemical Toilets. Chemical toilets shall be provided by the contractor and placed in an approved location.

(f) Pets. Contractors, subcontractors and employees are prohibited from bringing dogs and other pets to the construction site.

(g) Blasting. Any plans to blast shall be brought to the attention of the Board before commencement and shall be approved by the Board and the Declarant. Compliance with any and all applicable laws and regulations is mandatory. Proper safety and protective actions shall be used.

(h) Dust, Noise and Odor. Every effort shall be made to control dust, noise and odor emitted from a construction area. Radios, tape players, or other such devices must be played at a low volume. The contractor will be responsible for watering, screening or oiling dust problem areas as well as controlling noise and offensive odors from the site.

(i) Signage. Construction signs shall be limited to one sign per site not to exceed six (6) square feet of total surface area. The sign will be free standing. At no time will signs be placed on or nailed to trees.

(j) Fire Extinguishers. A minimum of one serviceable 1016 ABC or equivalent rated dry chemical fire extinguisher is recommended on each construction site in a conspicuous location.

(k) Construction Access. The only approved construction access during the time a home is being built will be over the approved driveway for the Lot unless the Board and the Owner of the property over which any alternative access is located approves an alternative access point.

(m) General. The following items are prohibited within the Property for the purpose of Residence construction:

- (i). Oil changing of vehicles and equipment without proper receptacles and removal procedures;
- (ii). Concrete equipment cleaning or concrete dumping without proper cleanup and restoration;
- (iii). Careless treatment of trees or preservation areas;

(iv). Removing any rocks, tress, plants, topsoils, etc., from any portion of the Property other than the Owner's property;

(v). Careless use of cigarettes or flammable items;

(vi). Firearms; and

(vii). Use of spring, surface or irrigation water for any purpose.

(n) Work in Rights of Way. Any work conducted in dedicated street rights of way may require Surface Alteration Permits or other permits from the governmental authority with jurisdiction over such street(s). No such work shall be conducted without such proper authorization.

(o) Stormwater Management and Similar Permits. To the fullest extent allowed by law, the Declarant intends and agrees to assign to the Association, and the Association agrees to assume, all enforcement rights and obligations pursuant to Storm Water Management Permits, Health Department Permits and Regulations, and Building Department Permits and Regulations (collectively, the "Permits and Regulations") relative to the construction of residences on Lots within Fox Meadows. Any violation of any of the Permits and Regulations may be enforced by or through the Association or its Members, under the same terms and conditions as violations of this Declaration may otherwise be enforced. Any and all costs, charges, penalties and expenses arising out of or resulting from any violations of the Permits or Regulations incurred by, or imposed upon, the Association, shall be the obligation of the Member or Members responsible (whether that responsibility is direct or through their respective contractors or invitees) and may be recovered by the Association through the imposition of Special Assessments or Default Assessments pursuant to Article IV, of this Declaration.

## ARTICLE X PROPERTY RIGHTS IN THE COMMON ELEMENTS

1. Owners' Easements. Subject to the provisions of Article IX, Section 18 hereof and to this Article X, every Owner shall have a non-exclusive right and easement for the purpose of access to their Lots and for use for all other purposes not inconsistent with the stated purpose of the Tract in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot. Tract A and Tract B stated purpose is a landscaped buffer. Tract C stated purpose is a Stormwater Management Facility.

2. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Members casting at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (80%) of the votes allocated to Lots not owned by the Declarant; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

(c) The right of the Association to promulgate and publish rules and regulations with which each Member shall comply; and

(d) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Association's Bylaws or rules and regulations; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including at least sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection (e); and

(f) The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, tenants, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

(g) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

3. No Construction on Common Elements. Other than the Declarant and the Association, no Person shall be permitted to construct any structure(s) or place any permanent Improvement(s) upon the Common Elements, nor to enclose any portion of the Common Elements.

4. Delegation of Use. Any Owner may delegate his right of use of and access over the Common Elements to the members of his family, his tenants, or contract purchasers who reside on his Lot.

5. Payment of Taxes or Insurance by Security Interest Holders. Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the

lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

6. Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to all Common Elements, including Improvements thereon, as well as personal property together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple title to Common Elements and easements described on the Plat.

7. Conveyance or Encumbrance of Common Elements.

(a) Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only if Persons entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by a Declarant, agree to that action.

(b) An agreement to convey Common Elements or subject them to a Security Interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Community is situated and is effective only upon recordation.

(c) The Association, on behalf of all Owners, may contract to convey an interest in the Community pursuant to subsection (a) of this Section, but the contract is not enforceable against the Association until approved, executed and ratified. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute the deeds or other instruments.

(d) Unless in compliance with this Section, any purported conveyance, encumbrance, judicial sale or other transfer of Common Elements is void.

(e) A conveyance or encumbrance of Common Elements pursuant to this Section shall not deprive any Lot of its rights of ingress and egress to the Lot and support of the Lot.

(t) A conveyance or encumbrance of Common Elements pursuant to this Section does not affect the priority or validity of preexisting encumbrances.

## **ARTICLE XI GENERAL PROVISIONS**

1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, may



be by any proceeding at law or in equity against any Person violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. For each claim, including, but not limited to counterclaims, cross-claims and third-party claims, in any legal proceeding to enforce the provisions of the Act or of the Declaration, the Association Bylaws, Articles of Incorporation or rules and regulations, the court shall award to the party prevailing on such claim the prevailing party's reasonable costs and attorneys' fees and any Person who is adversely affected by another Person's failure to comply with any of the aforesaid documents may require reimbursement for reasonable costs and attorney's fees for such failure to comply, without the necessity of commencing a legal proceeding. Failure by the Association or any Owner to enforce any covenants, restriction or other provision herein contained, or any other provisions of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability. All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

3. Conflict of Provisions. In case of any conflict between this Declaration and any Supplemental Declaration, this Declaration shall control. 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.

4. Conflict with the Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

5. Easements. Easements for the installation and maintenance of signage, utilities, irrigation, landscaping and drainage facilities are reserved as shown on the recorded plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities, or other uses, or which may change the direction of flow of drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels and to charge the Lot owner the cost of such work if the Lot owner or his representative changed the final grade of the Lot. The Association also holds title to certain easements for signage, landscaping and drainage and is obligated pursuant to the terms of such easements.

6. Duration, Revocation and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as expressly provided otherwise in this Declaration, during the first twenty (20) years after recording hereof, and during subsequent extensions thereof, this Declaration may be amended by a vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

(b) No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

(c) Every amendment to the Declaration must be recorded in the Office of the Clerk and Recorder of Mesa County, Colorado, and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of this Declaration or by the Act, no amendment may create or increase Special Declarant Rights, increase the number of Lots, or change the boundaries of any Lot or the Allocated Interests of a Lot, or the uses to which any Lot is restricted, in the absence of unanimous consent of the Owners.

(e) Amendments to the Declaration that are required by this Declaration to be recorded by the Association may be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

7. Maximum Number of Lots. Declarant hereby reserves the right to create up to thirty-seven (37) Lots in phases during the period of Declarant control.

8. Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, whether by the Association or any Owner, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such person or entity at such registered mailing address.

9. HUD or VA Approval. During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more First Security Interests: annexation of additional real property; amendment of this Declaration; termination of this Community; or merger or consolidation of the Association.

10. Description of Lots. It shall not be necessary to use the term "Lot" as a part of a legally sufficient description of a Lot.

11. Termination of Community. The Community may be terminated only in accordance with the Act.

12. Transfer of Special Declarant Rights. A Special Declarant Right created or reserved under this Declaration may be transferred only in accordance with the Act and only by an instrument evidencing the transfer recorded in the books and records of the Clerk and Recorder of Mesa County, Colorado. The instrument is not effective unless executed by the transferee.

13. Eminent Domain. The taking by eminent domain of a Lot(s) or Common Element(s) or any portion thereof, shall be done in accordance with applicable law, including without limitation the Act.

14. Mediation/Arbitration of Disputes and Other Matters. Notwithstanding anything to the contrary contained in this Declaration: all disputes and other matters between or among the Declarant, the Association, the Board of Directors of the Association, any committee of the Association, and any Owner(s), and any officer, director, partner, member, shareholder, employee, agent or other representative thereof (all of whom shall collectively be deemed to be intended beneficiaries of this Section), shall be submitted first to mediation and, if not settled during mediation, then to final, binding arbitration, all in accordance with the provisions hereinafter set forth in this Section; and such disputes and other matters shall not be decided by a court of law. The disputes and other matters which are subject to mediation and/or arbitration under this Section shall include, without limitation, the following: (a) those arising under the provisions of this Declaration, the Articles of Incorporation or the Bylaws of the Association; (b) those regarding any of the rules and regulations, design guidelines, resolutions, decisions, or rulings of the Association, its Board of Directors, or any of the Association's committees; (c) any and all controversies, disputes or claims between any of the intended beneficiaries of this Section, regardless of how the same might have arisen or on what it may be based; and (d) any statements, representations, promises, warranties, or other communications made by or on behalf of any of the intended beneficiaries of this Section. The mediation shall be conducted before the American Arbitration Association ("AAA") in accordance with AAA's Commercial or Construction Industry Mediation Rules. If the dispute or other matter is not fully resolved by mediation, then the same shall be submitted to binding arbitration before AAA in accordance with their Commercial or Construction Industry Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in and enforced by any court having jurisdiction over such dispute or other matter. Unless otherwise provided by law, the costs of mediation and arbitration shall be borne equally by the parties involved, if the dispute or other matter is arbitrated, the arbitrator(s) shall have the right to award reasonable attorneys' fees, costs and expenses to the prevailing party, including those incurred in mediation, arbitration, or other matters. All decisions regarding whether a dispute or other matter is subject to arbitration shall be decided by the arbitrator.

15. Dedication of Common Elements. Declarant, in recording this Declaration of Covenants, Conditions and Restrictions, has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners. The Common Elements owned by the Association are not dedicated hereby for use by the general public .

16. Limitation on Liability. The Association, the Board of Directors, the DRC, Declarant, and the officers, directors, members, agents and employees of the same, shall, to the fullest extent allowed by law, not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice.

17. No Representations, Guarantees or Warranties. No representations, guarantees or warranties, of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the DRC, or by any of their officers, directors, members, agents or employees, in connection with any portion of the Community, or any Improvement thereon, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

18. Disclaimer Regarding Safety. DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, THE DRC, AND THEIR OFFICERS, DIRECTORS, MEMBERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, THE DRC, AND THEIR OFFICERS, DIRECTORS, MEMBERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY.

19. Run with Land; Binding upon Successors. The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Community and all real property and Improvements which are now or hereafter become a part of the Community. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of, the Declarant, the Association, and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 2<sup>nd</sup> day of January, 2018.

"DECLARANT"

GRAND JUNCTION REAL ESTATE  
INVESTMENTS, LLC

By: Steve

Its: Manager

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA         )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of Jan., 2018, by Grand Junction Real Estate Investments, LLC, by Steve Voytilla, its Manager.

WITNESS my hand and official seal.

My commission expires: 11/09/2021

Kathleen A. Bowen  
Notary Public

