

# **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WEST CANYON SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and declared on \_\_\_\_\_, 2024, by WEST CANYON FRUITA, LLC, a Colorado limited liability company, hereafter referred to as "Declarant"

## **RECITALS**

A. Declarant is the owner of certain real property situate in Mesa County, Colorado, described as follows:

Lot 1 of Fish Minor Subdivision

to be platted as Lots 1 through 50, inclusive, and Tracts A through E, West Canyon Subdivision, hereinafter referred to as the "Property."

B. Declarant desires to develop and improve the Property as a planned community as defined in Section 38-33.3-103(22), C.R.S., under the name and style of West Canyon Subdivision and subject the same to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant declares the following covenants, conditions and restrictions:

## **ARTICLE I DEFINITIONS**

1.1 "Act" shall mean and refer to the Colorado Common Interest Ownership Act, section 38-33.3-101, *et seq.*, C.R.S., as presently existing or subsequently amended, including any successor statute. Pursuant to C.R.S. Section 38-33.3-116(2), the Property is a small planned community and is subject only to Sections 38-33.3-105, -106, and -107 of the Act.

1.2 "Allocated Interests" shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in Sections 4.3(b) any 5.2 of this Declaration.

1.3 "Architectural Control Committee" and "ACC" shall mean and refer to the West Canyon Association's Architectural Control Committee.

1.4 "Articles" shall mean and refer to the Articles of Incorporation of West Canyon Homeowners Association, Inc.

1.5 "Association" shall mean and refer to West Canyon Homeowners Association, Inc., a Colorado nonprofit corporation, formed for the purpose of being and constituting the entity for the

furtherance of the interests of the Owners of property in West Canyon Subdivision and performing the duties and responsibilities and exercising the powers set forth in this Declaration.

1.6 "Board" shall mean and refer to the Executive Board of the Association.

1.7 "Building" shall mean and refer to any Building, including all fixtures and improvements thereto, situate on the Property.

1.8 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.9 "Common Elements" shall mean and refer to that portion of the Property designated as Tracts on the Plat to be owned by the Association for the benefit of the Owners, including any Improvements thereto.

1.10 "Declarant" shall mean and refer to West Canyon Fruita, LLC, a Colorado limited liability company

1.11 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for West Canyon Subdivision.

1.12 "Development Rights" shall mean and refer to any right or combination of rights reserved by Declarant as set forth in Article VII of the Declaration.

1.13 "Improvements" shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plants, trees, shrubs, berms, ponds, signs, objects of art, mailboxes, irrigation facilities (including pumps, pipelines, drip lines and sprinklers) and other structures or landscaping of every type and kind situate on the Property.

1.14 "Lot" shall mean and refer to that part of the Property shown on the Plat as a Lot.

1.15 "Member" shall mean and refer to a Person or entity which is a member of the Association.

1.16 "Mortgagee" shall mean and refer to any Person holding an interest in or to any Lot to secure the performance of an obligation, including deeds of trust and mortgages.

1.17 "Owner" shall mean and refer to the record owner, whether one or more Persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having a lien, deed of trust or mortgage to secure the performance of an obligation.

1.18 "Person" shall include one or more individuals or entities, as the circumstances require.

1.19 "Plat" shall mean and refer to that certain plat of the Property recorded (or to be recorded) in the Mesa County Clerk and Recorder's official records. The Plat is incorporated herein by this reference.

1.20 "Property" shall mean and refer to all of the real estate situate described in the Recitals.

1.21 "Subdivision" shall mean and refer to West Canyon Subdivision, a residential subdivision in Mesa County, Colorado.

## **ARTICLE II GENERAL DECLARATION**

2.1 Intent. The purpose of this Declaration is to enhance, perfect and preserve the value, desirability and attractiveness of the Property and the Common Elements, Improvements and Buildings thereon in a manner beneficial to all Owners and to subject the Subdivision to the Act as a common interest community.

2.2 Estate Subject to Declaration. Declarant does hereby subject the Property to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to, touching and concerning and running with the land and shall at all times inure to the benefit of and be binding upon any Person having at any time any interest or estate in the Property, and their respective heirs, successors, representatives or assigns. All of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein shall be fully and completely set forth in their entirety in any document or instrument filed for record in the Mesa County Clerk and Recorder's office subsequent to the recording of this Declaration. The Improvements to any Tracts in West Canyon Subdivision, including the perimeter fencing installed by the Declarant, shall be owned and maintained by the Association.

2.3 Owners' Rights to Common Elements. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration, the Articles and Bylaws of the Association and any rules and regulations promulgated by the Association. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities for the members of his family, his tenants, or occupants who reside on his Lot.

## **ARTICLE III RESTRICTIONS ON USE**

3.1 Building Restrictions.

(a) Residential Use. All Lots shall be used solely for single-family residential purposes to include any Building constructed with a party wall on the Lot line. Only single-family

dwellings, a private garage, and other outbuildings directly incidental to single-family residential use shall be erected, altered, placed or permitted to remain on any Lot. At no time shall there be more than one single family residential Building situate upon any Lot, except that an accessory dwelling unit is allowed in accordance with the City of Fruita Land Use Code.

(b) New Construction. Only new I.R.C. (International Residential Code) residential buildings shall be permitted within the Property. Further, no temporary or accessory Building or structure of any type whatsoever shall be used at any time for a residence, either temporary or permanent, including trailers, teepees, tents, shacks, garages or sheds.

(c) Garages. Garages shall be required for all residential Buildings and shall be designed for a minimum of two (2) passenger automobiles (side by side). Detached garages are allowed, but covered carports shall not be permitted.

(d) Set Backs. The Subdivision is located in the City of Fruita, Mesa County, Colorado. All buildings shall meet or exceed setbacks established by the applicable zoning authority.

(e) Re-Subdivision, Re-Platting, Rezoning or Combining. No Lot shall be subdivided or re-platted by an Owner into smaller Lots or parcels, no Lot shall be re-platted, no Owner shall seek to change the zoning of such Owner's Lot, and no Lot may be combined with other Lots. There shall be no boundary line adjustment between any Lots, such that the original configuration is modified or altered; provided, however, underlying adjustment shall be permitted in the event there is an error in surveying the Plat, or error in the construction of the home such that a boundary line adjustment shall be reasonable and necessary to accommodate such error.

(f) Structure Height. All structures and Buildings shall be subject to the height restriction of the applicable governmental zoning ordinances.

(g) Perimeter Fencing. Perimeter fencing shall be limited to fences not exceeding six (6) feet in height and shall not extend beyond the front of the principal residential Building as approved by the ACC. Front yard perimeter fencing shall be fencing, as approved by the ACC and shall not exceed three (3) feet in height.

(h) Yard Lighting. Yard lighting shall be limited to low level lighting (six (6) feet or lower) on all Lots of the Subdivision.

(i) No Violation of Law. No Lot shall be used for any purpose which would be in violation of any federal, state or local statute, law, rule or ordinance.

(j) Mineral Extraction. No Lot within the Subdivision shall be used for any exploration or extraction of oil, gas or other minerals, including, but not limited to, the drilling, boring or developing of water, geothermal resources, hydrocarbons, minerals, rocks, stones, gravel or underground water.

(k) Signs and Advertising. No sign, poster, billboard or advertising device of any kind shall be allowed to be displayed on any Lot, except such signs as may be used by the Declarant in connection with the development, marketing and sale of Lots, signs that may be required by legal proceedings, signs as may be required for traffic control, "for sale" or "for rent" signs not exceeding six (6) square feet in connection with the sale or lease of a lot and address identification affixed to the exterior of a Building or painted on the curb.

(l) No Water Wells or Septic Sewage Disposal. No Lot shall be used for individual water wells, septic tanks or other individual sewage disposal systems.

### 3.2 Maintenance of Lots, Buildings and Improvements.

(a) Maintenance. The Owners shall keep, maintain and repair their Lots, Buildings and Improvements situated thereon, including any fencing or landscape Improvements installed by the Declarant in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration. The Owners shall repair and maintain any fencing on the common boundary with other Owners, including fencing installed by the Declarant, and the costs and expenses therefore shall be shared equally between the Owners sharing the common boundary. If any Owner shall fail or refuse to contribute to such Owner's share of the maintenance and repair expenses of the common boundary fencing, then the other Owner may make undertake such repairs and maintenance and recover the costs and expenses therefore from the non-paying Owner.

(b) Trash. No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate on any Lot. All garbage, rubbish and trash shall be placed and kept in covered containers. All containers shall be kept within garages or enclosed backyards so as to not be visible from neighboring property, except to make the same available for collection during regular trash collection days.

(c) Association's Authority. In the event any Owner fails to keep, maintain or repair such Owner's Lot or the Building(s) or Improvement(s) situated thereon, including landscape and fence Improvements installed by the Declarant, in accordance with this section, then the Association shall be authorized to conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner(s) on whose Lot or for whose benefit such maintenance or repairs were conducted as a reimbursement assessment pursuant to Section 5.4 hereof.

(d) Exterior Maintenance Area. In order to maintain a uniform appearance and a high standard of maintenance within West Canyon Subdivision, the Association may maintain the Exterior Maintenance Area, being the outside of any improvements and the unimproved area of all Lots, as more fully set forth below:

i. The Association may maintain the Exterior Maintenance Area, the fencing and the landscaping of the Lot, including, but not limited to lawns, trees and shrubs. The Owner shall have the obligation to perform all exterior painting required for the maintenance and upkeep of the improvements constructed on such Lots. The maintenance provided hereunder may be performed at

such time and in such a manner as the Association shall determine in the event the owner(s) failed to provide such maintenance after reasonable notice of default hereunder.

ii. The Owner shall be responsible for maintaining all portions of the Owner's Lot, not expressly accepted by the Association for maintenance, including the maintenance of any balcony, patio or deck area of his residence. No Owner shall make any addition or other alteration to any portion of the Lot without the express consent of the ACCO.

iii. In the event that a Lot and the improvements thereupon are not properly maintained and repaired, or in the event that the improvements on the Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All nonreimbursed costs shall be a lien upon the attached housing Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with this Declaration.

### 3.3 Home Occupations and Offensive Activities.

(a) Home Occupations. No Lot or Building may be used for commercial purposes except for home occupations. "Home occupations" shall mean an occupation by the occupant that is conducted entirely within the residential Building on a Lot that does not entail the employment of third Persons on the Lot, does not entail the delivery of goods or services to customers upon the Lot and does not entail visits by customers to the Lot. By illustration, an insurance agent may use a residence as a personal office so long as customers are not permitted to come to the residence; however, the establishment of a barber shop or a beauty shop would be prohibited. Short Term Rentals are allowed subject to the City of Fruita short-term rental regulations.

(b) Offensive Activities. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted.

(c) Hazardous or Illegal Activities. No activity shall be conducted on the Property and no Improvements shall be made to the Property which are unsafe or hazardous to any Person, Improvements or personal property. No Person shall engage in any activity which is illegal under the laws of the United States, State of Colorado or County of Mesa.

3.4 Restrictions on Occupants and Pets. No animals shall be allowed other than domestic pets. Domestic pets shall be limited to a reasonable number on an Owner's Lot. No domestic pet may be kept on any Lot which is a nuisance, annoyance or is dangerous or hazardous to the other Owners or occupants of Lots. Household pets shall be contained on the Owner's Lot and not permitted to run loose or at large in the Subdivision. The Association's Board shall have the authority to determine if any

domestic pet is a nuisance or hazardous or whether the number of pets kept on any Lot is unreasonable in number. No horses, cows or other livestock of any type shall be kept on any Lot. Household pets shall be under the control of their owners at all times.

### 3.5 Parking.

(a) Owners' Motor Vehicles. Passenger automobiles and pick-up trucks not exceeding one ton owned by the Owner or occupant of a Lot shall be parked within the garage situate on the Lot or on the driveway of the Lot. No street or other portion of the Lot may be used by the Owner or the occupant for the parking or storage of automobiles or pick-ups except to the extent permitted under section 38-33.3-106.5(1)(d), C.R.S.

(b) Other Vehicles. Recreational vehicles, boats, campers, trailers, snowmobiles and vehicles used for business (other than passenger automobiles) may be stored on a Lot only if placed within a garage, placed in an Architectural Control Committee-approved outbuilding or screened storage facility, behind the front of the principal dwelling Building on the Lot. No recreational vehicles, boats, trailers, trucks or other vehicles or equipment shall be parked or stored on any street except for vehicles or trucks of guests or invitees visiting on a temporary basis not to exceed 48 hours in any five-day period, unless permission is obtained from the Association.

3.6 Landscape Requirements. Each Owner shall landscape the front and backyard of their Lot within six (6) months following the issuance of a certificate of occupancy. If weather does not permit compliance with this deadline, the Owner may request an extension of time from the ACC, which extension shall not be unreasonably withheld. Should the Lot Owner fail to comply with the landscaping guidelines set forth herein, the Association may, at its sole discretion, cause such landscaping to be completed at the Owner's expense, and assess such Owner for such costs under Article 5.4.

3.7 Landscape Plans. A landscape plan shall be submitted to, and approved by, the ACC prior to the placement of any landscape Improvements on a Lot. The landscape plans may be shown on the same set of plans as the building plans, providing the location of the trees and the vegetative cover or xeriscaping is clearly shown.

3.8 Landscape Maintenance and Weed Control. All vegetation shall be properly cultivated, watered and neatly trimmed. Each Owner is responsible for weed control on their Lot. If after written notice from the Association of the need to conduct weed control or maintain vegetation, the Owner does not conduct such weed control or vegetation maintenance, then the Association may do so at the Owner's expense and assess such Owner therefor under Article 5.4.

3.9 Pets. A maximum of two (2) household pets will be permitted so long as they remain in control of the Owner. Any pet outside the fenced area of the Lot shall be on a leash under the control of the Owner. The Association shall have the right to promulgate rules and regulations regarding pets.

## **ARTICLE IV THE ASSOCIATION**

4.1 General Powers. The Association's general purpose is to be and constitute the entity to further the mutual interests of the Declarant and the Owners pursuant to this Declaration, the Articles and Bylaws and the Act, including without limitation, enforcement of the Declaration; owning, repairing and maintaining the Common Elements; maintenance and use of any Lots, Buildings and Improvements as authorized in the Declaration; levying and enforcing assessments to defray the cost and expenses of the Association's duties and responsibilities in this Declaration; and, providing other utilities and services pursuant to the Articles and Bylaws. The Association shall have and may exercise all of the powers and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act.

4.2 Directors of the Association. The affairs of the Association shall be managed by an Executive Board of three (3) directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 4.3.C. below, the Board shall be managed by at least three (3) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

### 4.3 Membership and Voting Rights.

(a) Membership. By acceptance of a deed to a Lot, each Owner shall be a Member of the Association. A membership shall be appurtenant to and may not be separated from ownership of any Lot.

(b) Voting. The Association shall have one class of voting membership, each Owner being entitled to vote one vote for each Lot owned upon matters subject to vote by the Members as provided in the Articles and Bylaws of the Association. A vote for each Lot shall be exercised as the Owner or Owners may determine, but in no event shall more than one vote be cast with respect to any Lot.

(c) Declarant's Control. From the date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant or two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Owners other than Declarant, at least one Member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Owners other than Declarant, not less than thirty-three and one-third



percent (33%) of the members of the Board must be elected by Owners other than Declarant. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in the Act.

#### 4.4 Limitation Upon Liability.

(a) Indemnification of Officers and Board Members. Neither the Association, any member of the Board, any officer of the Association, any member of the ACC, nor any agent or employee of the Association, shall be liable to any Owner or other Person or entity for any action or any failure to act with respect to any matter, provided the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any member of the ACC, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such Person or of the Association, the Board, the ACC or any committee of the Association, provided that such Person has acted in good faith and without willful or intentional misconduct.

(b) Limitation of Liability of Association. Notwithstanding the duty of the Association to maintain and repair the Common Elements and other portions of the Property as authorized in the Declaration, the Association shall not be liable for bodily injury, property damage or death to any Person caused by any hazardous or dangerous physical condition of the Common Elements which is not known, or would not be known in the exercise of reasonable diligence, by the Association, or the acts or omissions of any other Owner or other Persons causing such personal bodily injury, property damages or death.

4.5 Association Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than the Declarant, the Association shall maintain, to the extent reasonably available:

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

(b) Commercial General Liability Insurance. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements in such amounts deemed sufficient in the judgment of the Executive Board insuring the Executive Board, the Association, any management and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in the Declarant capacity as a Lot Owner and/or Board member. The Lot Owners shall be included as an

additional insured but only for claims and liabilities arising in connection with their use of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) Insurance Requirements The insurance policies carried pursuant to subsections Section 4.5(a) and (b) above must provide that:

i. Each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

ii. The insurer waives its rights to subrogation under the policy against any Owner or member of such Owner's household;

iii. No act or omission by an Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

iv. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(d) Workers' Compensation and Unemployment Insurance. The Association shall purchase and maintain workers' compensation and unemployment insurance upon employees of the Association as required by statute.

(e) Fidelity Insurance. The Association shall purchase fidelity insurance to the extent required by the Act; but if not required by the Act, The Association may purchase fidelity insurance in its discretion.

(f) Other Insurance. Such other insurance as the Board may deem desirable for the benefit of the Owners. Insurance coverage on structures and built-in improvements, including carpet, oven, range, refrigerator, wallpaper, disposal, plumbing fixtures, sinks, bathtubs and other items of personalty shall be included in the calculations for the replacement cost coverage on each building and the garages, and protected in the insurance policy purchased by the Lot Owner unless the Association elects to acquire insurance for any improvements constructed with a party wall.

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

(h) Owner Insurance. Lot Owners shall carry insurance for their benefit and at their expense providing insurance coverage on real and personal property and public liability. Personal property would be defined as all articles and contents of a personal nature that are not built in or made a physical part of the building structure. The liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any additional insurance carried by any Lot Owner.

4.6 Ownership and Maintenance of the Common Elements. The ownership, maintenance, repair and restoration of the Common Elements, together with Improvements thereon, shall be vested solely in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing and restoring the Common Elements and Improvements thereon shall be borne by the Owners as a regular assessment as provided in Article V hereof.

4.7 Party Walls.

(a) Definition. All walls common to adjacent structures constructed on Lots, and the portions of the roof directly above, are collectively designated as "Party Walls."

(b) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the attached housing lots and placed on the dividing line between the residences shall constitute a Party Wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any construction involving a Party Wall shall require the use of the same general contractor for construction of the residence on either side of the Party Wall.

(c) Maintenance and Repair. Any damage occurring to a Party Wall shall be promptly repaired, and the cost shall be borne in equal shares by the Owners of the structures that share the Party Wall; except that damage to a Party Wall that is occasioned by the act or the negligence of one Owner or his/her agent, invitee or guest, or deterioration which occurs on the surface of a Party Wall which is within one structure, shall be promptly repaired to at least its former condition and paid for by that Owner.

(d) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(e) Weatherproofing. Notwithstanding any other provision of this section, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(f) Easement for Encroachment. If any portion of a structure encroaches upon or over an adjoining structure, an exclusive easement for the encroachment and for the maintenance of the same, so long as the encroachment exists, is hereby granted. Encroachments include, but are not limited to, encroachments caused by error in the original construction of the improvements, by error in the plat described above, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the structure. An easement is not granted for improvements by an Owner that are not required or authorized by this Declaration.

(g) Exterior Maintenance. Each Owner shall maintain the exterior of his/her structure in a clean and orderly fashion. No Owner shall materially alter the construction of a Party Wall without the prior written consent of all other owners who share the use of that wall.

(h) Insurance. The Owner of each structure with a Party Wall shall maintain at all times insurance coverage insuring against loss of damage by fire and extended coverage perils in an amount not less than the full replacement value of the structure.

(i) Failure to Pay for Damages or Repair. In the event an Owner neglects or refuses to pay his/her share of damages to a Party Wall or for maintenance of the structure within 30 days after receipt of a written request for payment, the Owner of any Lot who shares the use of the wall may pay the reasonable costs therefor, and shall have a lien against the non-paying Owner's Lot and improvements for the amount of such payment, plus costs, reasonable attorneys fees, and interest at the legal rate.

#### 4.8 Irrigation Water.

(a) Ownership and Regulation. All irrigation water to be furnished to the Lots is owned and furnished by the Association. All Owners shall be required to install underground sprinkler systems and drip lines to irrigate lawns and ornamental shrubs and trees. The Association shall have the right to regulate the use of irrigation water provided to the Lots and may institute and enforce rules and regulations regarding which days and which times irrigation water may be used for any Lot. The initial watering schedule shall be even numbered addresses on even dates and odd numbered addresses on odd numbered dates.

(b) Irrigation Facilities. The irrigation facilities to be owned by the Association may consist of a system of pipes, pipelines, pumps, electrical connections, sprinklers, drip lines and related facilities so as to distribute irrigation water to the Lots and Common Elements. The irrigation facilities shall be owned, operated and maintained by the Association.

(c) Maintenance and Repair. It shall be the obligation of the Association to own, operate, maintain and repair the irrigation facilities distributing water to all Lots. Owners shall be responsible for operation and maintenance and repair of the sprinkler system and related facilities installed by the Owners within their Lot.

(d) Use of Easements. The Association may use any easement across the Common Elements and across the Lots where designated on the Plat to operate, maintain, and repair the irrigation facilities, including, but not limited to, easements designated for recreation, utility or general purposes and Declarant hereby reserves for itself and the Association, their successors and assigns, an easement for exterior maintenance and repair of all improvements.

(e) Assessment. The cost of the operation, maintenance and repair of the irrigation facilities shall be a regular assessment to all of the Owners under Article 5.2.

## **ARTICLE V ASSESSMENTS**

5.1 Owner's Obligation. By accepting a deed to any Lot, each Owner agrees to pay to the Association all the assessments, to be fixed and levied from time to time as provided in the Declaration, the Articles and Bylaws. Such assessments, together with interest accruing thereon and the costs of collection in the event of a delinquency of payment, shall be the personal obligation of the Person who is the Owner, or the Persons who are jointly and severally the Owner, at the time the assessment was made.

### 5.2 Regular Assessments.

(a) At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the cost and expenses to be incurred by the Association during such fiscal year in performing its functions, and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such fiscal year which is attributable to the operation and maintenance assessments for the prior fiscal year. The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the Common Elements, or the other duties and obligations of the Association as provided in the Declaration, Articles or Bylaws, which sums may include, among other things, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain, care of grounds, landscape Improvements, common lighting and heating, repairs and renovations, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Subject to Section 5.2(b) hereof, the sum or net estimate so determined shall be allocated to the Owners by dividing the total estimate by the total number of single family residential Lots and assessing the resulting amount to the Owner of each Lot equally. Assessments shall be paid in one (1) or more installments and be due on such date(s) as the Association shall determine.

(b) Within ten (10) days after adoption of any proposed budget for the Association, the Board 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 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 Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(c) Until January 1 of the year immediately following the conveyance of 75% of the lots to nondeclarant Owners the maximum annual assessment shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per lot.

i. From and after January 1 of the year immediately following the conveyance of 75% of the lots to nondeclarant Owners the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

ii. From and after January 1 of the year immediately following the conveyance of 75% of the lots to nondeclarant Owners the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

iii. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

5.3 Special Assessments. If at any time during the fiscal year the regular assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a special assessment in the amount of such actual or estimated inadequacy. The special assessment shall be assessed to the Owners by dividing the total estimate by the total number of residential Lots and assessing the resulting amount equally to the Owner of each Lot, such assessment to be paid either in equal monthly installments over the balance of the remaining fiscal year, or in a lump sum upon billing as the Board shall determine.

5.4 Reimbursement Assessment. The Association may levy an assessment against any Owner or Owners as a result of such Owner's failure to landscape such Owner's Lot, or failure to repair, maintain or restore the Improvements and Buildings situated on such Owner's Lot including landscape or fence Improvements installed by the Declarant or as is otherwise authorized by this Declaration. Such assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses paid or incurred for such purposes and shall be due and payable to the Association when levied, or at such time or times as the Association shall determine.

5.5 Reserve Fund. The Association may establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through annual payments of the common assessments and shall be held

by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

5.6 Capital Improvements. In addition to regular and special assessments, the Association may levy, in any assessment year, a special assessment for the purposes of defraying in whole or in part the cost of any capital Improvement upon the Common Elements, including fixtures, landscape Improvement, personal property related thereto or the Irrigation Facilities, provided that such assessment shall have the affirmative vote of a majority of the Members of the Association approving the assessment.

5.7 Enforcement. The Association may enforce payment of assessments by any or all of the following remedies which shall not limit any other remedy permitted by law or the Act:

(a) Acceleration. The Association may elect to accelerate and declare immediately due and payable the remaining balance of any assessment payable in installments for such fiscal year.

(b) Collection. The Association may bring a suit at law to collect delinquent assessments, including any accelerated assessment. Any judgment rendered in such action shall include a sum for costs of suit, including a reasonable attorney's fees.

(c) Lien. All delinquent assessments shall be and constitute a lien upon the Owner's Lot in addition to being the personal obligation of the Owner. Such lien shall have the priority and shall be enforced in accordance with section 38-33.3-316 of the Act.

(d) Penalty. Beginning with second month of delinquency, a five percent (5%) penalty will be added to all delinquent amounts each month until payments are current.

5.8 Out-of-State Owners Who Are Not Occupants. In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:

(a) Bond. Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or

(b) Advance Payment. Pay the regular assessment pursuant to Section 5.2 hereof in advance by the 10th day of the first month of the fiscal year.

## **ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE**

6.1 Establishment of the ACC. The Association shall establish and maintain the ACC, consisting of three (3) Members, each of whom shall be appointed and removed by the Executive Board of the Association from time to time in its discretion. The ACC and the members thereof shall not be liable for damage to any Person submitting requests for approval or to any Owner within the Property by reason of any act, omission, approval, disapproval or failure to approve or disapprove with regard to any request. The actions of the ACC shall be deemed conclusively binding upon the Owners.

6.2 Guidelines and Standards. The ACC shall establish rules, procedures, standards, guidelines and requirements, including design standards and guidelines, governing the review and approval of all Improvements proposed for new construction or the restoration or modification of existing construction within the Subdivision consistent with this Declaration. The design standards and guidelines may be amended from time to time as the ACC deems reasonable or necessary.

6.3 Submission of Plans. Prior to the commencement of any work to accomplish any proposed Improvement, the Owner proposing such Improvement shall submit such plans, designs, drawings, specifications and samples as the ACC shall require pursuant to its design and development standards and guidelines, which may include, but are not necessarily limited to the following: construction plans and specifications, including floor plan and exterior elevations; site plan of house to be built on the Lot; sample of exterior colors; sample of trim and soffit colors; sample of roof shingle; landscape plan, including sprinkler system, drainage and grading; and application for ACC approval in the form required by the ACC.

6.4 Content of Plans. All plans submitted to the ACC shall contain sufficient detail to allow the ACC to determine compliance with its design and development standards and guidelines. The ACC may request additional detail, drawings or other documentation in its discretion.

6.5 Approval of Plans. The ACC shall approve any plans submitted if it determines in its discretion that such plans comply with the ACC's rules and procedures, the architectural design and development standards and guidelines, and the requirements of the Plat and the Declaration. Upon approval of any plans, the ACC shall stamp both sets of the plans accordingly and return one set to the applicant. The other set shall be retained by the ACC, along with the application form. In the event of any later discrepancies between the set of plans given to the applicant and the set retained, the set of plans on file with the ACC shall control.

6.6 Meetings of the ACC. The ACC shall meet as often as necessary to review applications. The meetings shall be held at locations, times and dates determined by the ACC. Such meetings shall be conducted according to the procedures adopted by the ACC. The applicant may attend the meetings. The applicant may address the ACC or answer questions in the ACC's discretion. The majority vote of the ACC members shall be required to take any action on behalf of the ACC.



6.7 ACC Compensation. The ACC may be compensated for services performed pursuant to this Declaration within the discretion of the Executive Board.

## **ARTICLE VII DECLARANT'S RESERVED RIGHTS**

7.1 Statement of Interest. Declarant hereby reserves to itself and its successors and assigns the Development Rights set forth herein, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration and ending on the date of termination of such rights established under Section 7.7 below. It is expressly understood that Declarant shall not be obligated to exercise any of these Development Rights, and that no consent shall be required from any Owner, Mortgagee, or the Association for the effective exercise of any of the Development Rights.

The Development Rights hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the Development Rights reserved by and to Declarant in this Article VII and elsewhere in this Declaration, even though no specific reference to such rights appears in the conveying instruments.

7.2 Construction of Improvements on the Common Elements. The Declarant reserves the right, but not the obligation, to construct additional Improvements on the Common Elements at any time and from time to time for the improvement and enhancement thereof for the benefit of the Association or the Lot Owners. The right to complete Improvements indicated on the Plat or this Declaration may be amended from time to time. The right to construct and complete Improvements required by the terms of any development improvements agreement with applicable governmental entity may be amended from time to time. The Declarant shall have the right to create, grant and/or use and enjoy additional nonexclusive easements, and to relocate existing platted or other easements, upon or across any portion of the Property (including Lots and Common Elements), as may be reasonably required for the construction by Declarant of Improvements to the Common elements or the effective exercise by Declarant of any of the other Development Rights described in this Article.

7.3 Sales, Marketing and Management. The Declarant shall have the right to construct, locate or operate, and to maintain upon, and to remove from any part of the Property, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvements, the management of the development, and/or the promotion, marketing, sale or rental of Lots, the following:

(a) A sales office, management office and/or construction office, and structure containing or relating to the same, including without limitation mobile home, office trailer and construction trailer. Such office, facility and structure, to the extent it is not situated on a Lot or is removable therefrom, is hereby declared to be personal property of the Declarant and shall in any case

be removable by Declarant or their successors or assigns upon the Declarant or Declarant's successors or assigns ceasing to be a Lot Owner;

(b) Signs identifying, advertising and marketing the Property and the Lots therein or related to development or construction thereon;

(c) Model residences constructed or to be constructed on Lots;

(d) Parking areas and facilities and lighting necessary or desirable in the marketing of the Property and the Lots; and

(e) Employees, equipment, vehicles and marketing and construction materials.

7.4 Declarant's Control of Association. Declarant shall have the right to appoint or remove any Executive Board member or officer of the Association as more specifically set forth in Article 4.3 above consistent with the Act.

7.5 Other Reserved Development Rights. Subject to compliance with the requirements of the applicable governmental authority, the Declarant may as to all or any portion of the Declarant-owned Property: (a) create additional Lots; (b) subdivide Lots; (c) combine Lots; (d) create Common Elements; and (e) reconfigure Lots, or streets. Additionally, in order to effectively exercise the Development Rights reserved to Declarant under this Article VII, the Declarant may amend this Declaration and the Plat (without the consent of Owners, Mortgagees or the Association being required) for purposes of complying with or qualifying for any required federal or state registration of the project, satisfying title insurance requirements, bringing any provision or provisions of the Declaration or the Plat into compliance with the Act, or cure technical errors, typographical errors or deficiencies in the Declaration or Plat.

7.6 Transfer of Declarant's Reserved Rights. Any one or more rights created or reserved for the benefit of Declarant under this Article VII or elsewhere in this Declaration or in any supplemental Declaration may be transferred to any Person by an instrument describing the right or rights transferred and recorded in the Mesa County records. Such instrument shall be executed by the Declarant and the transferee. The provisions of section 38-33.3-304 of the Act shall apply to any transfer of the Declarant's reserved rights.

7.7 Termination and Extension of Declarant's Reserved Rights. With the exception of Declarant's right to appoint or remove Executive Board members and officers of the Association, the rights reserved to Declarant in this Article VII shall automatically terminate and expire upon the first to occur of (i) the date which is twenty (20) years after the recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by recorded instrument. The Association is authorized and empowered to extend the time period for Declarant's exercise of the Development Rights, or reinstate a lapsed Development Right, without requiring Lot Owner or Mortgagee approval thereof. The extension or renewal of a Development Right shall be made as an amendment to the Declaration or Plat, as the circumstances require, and shall be executed by Declarant and the Association.

7.8 Owner Acceptance and Waiver of Rights Regarding Declarant's Reserved Rights. Each Owner, by his/her acceptance of a deed to a Lot, acknowledges that the Owner has read and understands the Declarant's reserved Development Rights as set forth in this Article VII or elsewhere in this Declaration, that the Owner accepts, approves and understands the Declarant's reserved Development Rights and waives and releases any rights the Owner may have to object to or to interfere with the implementation or the exercise of the Development Rights reserved by the Declarant.

## **ARTICLE VIII GENERAL PROVISIONS**

8.1 Enforcement. The provisions of the Declaration may be enforced by the Association or any Owner against any Person, including any Owner or the Association, as a result of any failure to comply with the terms of the Declaration, the Bylaws or the Act to the fullest extent permitted under the Act including the recovery of costs and attorney's fees with or without commencing legal proceedings. The failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed an estoppel or waiver of the right to enforce this Declaration, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

### 8.2 Resolution Procedures.

(a) Dispute Resolution. Except as provided in Section 5.7, all actions, disputes, claims or controversy between any Owner, the Architectural Committee, the Association, the Declarant, and their respective agents, contractors, successors and assigns, whether in contract, tort or otherwise, shall be resolved by the procedures as set forth in this Section 8.2 or as set forth in any limited warranty (if any), or any applicable agreement between Declarant and any Owner or his/her heirs, successors or assigns.

(b) Initial Notification; Negotiation. For each claim governed by this section (a "Claim"), the claimant ("Claimant") shall give notice to the other party(ies) against whom the claim is asserted ("Respondent"), setting forth: the nature of the Claim; the basis or reason for the Claim; any other material information regarding the Claim; the specific relief and/or proposed remedy sought; and the intent to invoke this Section (the "Notice of Claim"). Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the notice, pending mediation pursuant to Section 8.2(c).

(c) Mediation. The Claim shall first be mediated before a mediator jointly selected by the parties. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute formally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The mediation shall occur within thirty (30) days following delivery of the Notice of Claim (the "Mediation Period"). Mediation shall be a condition precedent to arbitrating any dispute. In the event Claimant does not appear for mediation, Claimant shall be deemed to have irrevocably waived the Claim, and Respondent shall be released from any and all liability to Claimant on account of such Claim. The costs of the mediation shall be borne equally by

Claimant and Respondent. In the event mediation is successful, the resolution shall be documented in writing and signed by the parties. Thereafter, if either party violates the resolution, the other party may apply immediately to a court for relief. The mediation, unless otherwise agreed, shall terminate in the event that the entire dispute is not resolved before the expiration of the Mediation Period. In the event that mediation is unsuccessful, then Claimant may make written demand for arbitration pursuant to Section 8.2(d) within sixty (60) days following the expiration of the Mediation Period. If no written demand for arbitration is made within the specified time, Claimant shall irrevocably waive the Claim and any and all right to proceed to arbitration regarding the Claim.

(d) Arbitration. Following the Mediation Period and a written demand for arbitration, the Claim shall be resolved by binding arbitration administered by the American Arbitration Association (or any successor to such association) in accordance with the current American Arbitration Association Construction Industry Arbitration Rules in effect at the time of submission to arbitration, and as provided for in this subsection. In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules. Should an action, dispute, claim or controversy be brought against Declarant and or any builder by a third party who is not bound by a binding arbitration provision similar to the arbitration provision contained herein, the terms of this subsection shall apply to such action, dispute, claim or controversy. The Arbitrator shall be selected from a panel of Arbitrators from Mesa County, Colorado (or if no such panel is available, from Denver County, Colorado), with an Arbiter mutually acceptable to the parties. If the parties are unable to jointly agree upon the Arbiter, then each party shall select an arbiter and the two arbiters shall select a third person to serve as the sole Arbiter. The parties agree that the Arbiter shall have substantial experience in the real estate field. The parties shall share equally in the arbitrator's fees and the costs of the arbitration. All parties shall have the right to be represented by legal counsel. In determining any question, matter, or dispute before them, the Arbiter shall apply the provisions of the Declaration and Articles and Bylaws, without varying from them in any respect, and they shall not have the power to add to, modify or change any of the provisions hereof. Any arbitration award may be enforced through entry of judgment by any court having jurisdiction thereover. Exclusive venue for any arbitration proceeding shall be in Mesa County, Colorado. Except as may be required by law or for enforcement, neither a party nor the Arbiter may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the Claim.

The Arbiter's decision may contain findings of fact and conclusions of law to the extent applicable and the Arbiter shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the Arbiter upon all of the issues considered by the arbitrator is conclusive, final and binding upon the parties. Judgment upon any award rendered by the Arbiter may be entered by any State or Federal Court, as appropriate.

(e) Standards of Construction. If any claim regarding defects in construction is made, each claim shall be specified with particularity. Each location of any claimed defect must be identified and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided by the claimant in advance of any mediation hereunder. In any arbitration or other proceedings, it shall be rebuttably presumed that any construction done by the builder or Declarant was not defective, that the builder or Declarant adequately performed its obligations under its contract, and

that the builder or Declarant was not negligent if the builder or Declarant's performance was substantially in accordance with any of the following: (A) the standards of trade in the Grand Junction Area on the date hereof or (B) Any applicable building code in Grand Junction on the date hereof; or (C) any applicable national association of home builders residential construction guidelines. In any such proceedings, evidence of any scientific, engineering, or technical advancements or other knowledge or techniques, or any design theory or philosophy, or any construction or testing knowledge or techniques, where such advancements were discovered subsequent to the date hereof, shall not be admissible for any purpose. If any of Claimant's claims relate, in any way, to any work completed by any of Declarant's or builder's subcontractors or any materials and/or equipment provided by any suppliers, Declarant or builder, as applicable, in its sole discretion, may join such subcontractors and/or suppliers to any arbitration proceeding with Claimant. The sole manner which may be used to establish breach of any obligations under this Declaration, any obligations which may exist by law or reason of any statute, any applicable industry standards, and/or Claimant's damages, including, but not limited to, appropriate repair costs, shall be through the testimony of a homebuilder with experience in Mesa County, Colorado. The Arbiter shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

(f) Limitation of Remedies. Each party hereby disclaims and waives any claims for the following remedies and damages for any matters related to any Claim, whether a Claim is made on the basis of contract, tort or any other theory or basis at law or in equity: (i) punitive or exemplary damages, (ii) claims for emotional distress or pain and suffering and/or (iii) claims for incidental and/or consequential damages (except as otherwise provided herein). Claimant further agrees that, subject to the other limitations contained herein, Respondent's total liability to Claimant shall be limited to, and in no event exceed, the amount of any insurance proceeds actually available with respect to any and all Claims, whether in contract, tort or otherwise.

(g) Acknowledge of Waiver of Right to Jury Trial. Each party understands that by using binding arbitration to resolve disputes they are voluntarily waiving and giving up any right that they may have to a judge or jury trial with regard to all issues concerning the Lot, Home, common elements, the Property, Improvements, and matters related thereto.

8.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

8.4 Amendments. The Declaration and/or the Plat may be amended by Declarant at any time and for any purpose prior to the conveyance of the first Lot to an Owner. Subsequent to the conveyance of the first Lot to an Owner, the Declarant may amend the Declaration or the Plat: (i) to correct any clerical, typographical or technical errors, (ii) to comply with the requirements, standards or guidelines of recognized secondary markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans' Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association, (iii) to exercise any of the reserved Development Rights as set forth in Article VII above or (iv) to effect the Declarant's intent as expressed in the Declaration or the Plat. This Declaration may also be amended at any time and for any purpose and in such manner as is provided in the Act. This Declaration may also be amended by vote or agreement of Owners of Lots to which at least fifty-one percent (51%) of the

votes in the Association are allocated, provided such amendment does not impair, restrict or modify any of the reserved Development Rights of the Declarant, or conflicts with any provision of the Act. Any amendment must be recorded.

8.5 Limitation on Association. Any action, resolution or attempted action of the Association in conflict with any term or provision of this Declaration shall be void and of no force and effect whatsoever.

8.6 Notice. Notice of matters affecting Lot Owners may be given to such Owners by mailing such notice by first class mail to the last address provided by the Owner to the Association. If no address has been provided by Owner, such notice shall be mailed to the address of Owner's Lot.

8.7 Governing Clause. This Declaration shall control and govern over any conflicting provision of the Act, except to the extent that such conflicting provision in the Act is mandatory according to the terms of Sections -105, -106, and -107 of the Act. This Declaration shall further control any conflicting term in the Articles, Bylaws or any rule or regulation promulgated by the Association or the ACC.

IN WITNESS WHEREOF, Declarant sets its hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

WEST CANYON FRUITA, LLC, a Colorado limited liability company

By: Western Canyon Homes, LLC, Member

By: \_\_\_\_\_  
Quintin Shear, Manager

By: J. Howell, LLC

By: \_\_\_\_\_  
Justin Howell, Manager

By: B & B Custom Homes, LLC, Member

By: \_\_\_\_\_  
David Bagg, Manager

STATE OF COLORADO     )  
  )ss.  
COUNTY OF MESA         )

This record was acknowledged before me on \_\_\_\_\_, 2024, by Quintin Shear, the Manager of Western Canyon Homes, LLC, a Member of West Canyon Fruita, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My notarial commission expires:

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

STATE OF COLORADO     )  
  )ss.  
COUNTY OF MESA         )

This record was acknowledged before me on \_\_\_\_\_, 2024, by Justin Howell, the Manager of J. Howell, LLC, a Member of West Canyon Fruita, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My notarial commission expires:

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

STATE OF COLORADO     )  
  )ss.  
COUNTY OF MESA         )

This record was acknowledged before me on \_\_\_\_\_, 2024, by David Bagg, the Manager of B & B Custom Homes, LLC, a Member of West Canyon Fruita, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My notarial commission expires:

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