

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**CANYON VIEW SUBDIVISION**

May 18, 2009 – Adopted August 31, 2009

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR CANYON VIEW SUBDIVISION**

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON VIEW SUBDIVISION is made and declared this \_\_\_\_ day of \_\_\_\_\_, 2009, by the Owners of Lots within Canyon View Subdivision.

**ARTICLE I**  
**FACTS AND PURPOSES**

1.1 Owners are the owners of certain real property located in Mesa County, Colorado, known and described as Canyon View Subdivision.

1.2 Prior to the adoption of this Declaration, Canyon View Subdivision was subject to the following declarations, all of which are superseded by this Declaration:

A. The Declaration of Covenants, Conditions and Restrictions of Canyon View Subdivision was recorded on May 23, 1994 in Book 2073 at Page 858, Reception No. 1683111, of the records of the Mesa County Clerk and Recorder.

B. The Amended Declaration of Covenants, Conditions and Restrictions of Canyon View Subdivision was recorded March 23, 1995 in Book 2134 at Page 887, Reception No. 1712413, of the records of the Mesa County Clerk and Recorder.

C. The Amended Declaration of Covenants, Conditions and Restrictions of Canyon View Subdivision Filing 3 was recorded May 9, 1996 in Book 2230 at Page 740, Reception No. 1756088, of the records of the Mesa County Clerk and Recorder.

D. The Declaration of Covenants, Conditions and Restrictions of Canyon View Subdivision Filing 4 was recorded December 31, 1996 in Book 2291 at Page 188, Reception No. 1783543, of the records of the Mesa County Clerk and Recorder. An Amendment to the Declaration of Covenants, Conditions and Restrictions of Canyon View Subdivision Filing 4 was recorded January 14, 1997 in

Book 2294 at Page 345, Reception No. 1785026, of the records of the Mesa County Clerk and Recorder.

E. The Declaration of Covenants, Conditions and Restrictions of Canyon View Subdivision Filing V was recorded April 14, 1997 in Book 2316 at Page 611, Reception No. 1794931, of the records of the Mesa County Clerk and Recorder.

F. The Declaration of Covenants, Conditions and Restrictions of Canyon View Subdivision Filing VI was recorded December 18, 1997 in Book 2387 at Page 83, Reception No. 1824921, of the records of the Mesa County Clerk and Recorder.

1.3 Owners desire to amend and restate the current declarations applicable to Canyon View Subdivision pursuant to the Colorado Common Interest Ownership Act ("Act"), sections 38-33.3-101, *et seq.*, C.R.S., and subject Canyon View Subdivision to the covenants, conditions and restrictions hereinafter set forth.

1.4 This Declaration has been approved by not less than sixty-seven percent (67%) of the Owners of Lots in Canyon View Subdivision.

## ARTICLE II DEFINITIONS

2.1 "The Act" shall mean and refer to the Colorado Common Interest Ownership Act, Colorado Revised Statutes, Title 38, Article 33.3, as the same may exist on the date that these Covenants are recorded, and as the same may be amended from time to time hereafter, or any statute of similar effect.

2.2 "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 6.3.B and 7.2 of this Declaration.

2.3 "Architectural Control Committee" shall mean and refer to the Architectural Control Committee (ACC) referred to in Article V of this Declaration.

2.4 "Articles" shall mean and refer to the Articles of Incorporation of Canyon View Estates Homeowners Association, Inc.

2.5 "Association" shall mean and refer to Canyon View Estates 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 Canyon View Subdivision and enforcing the restrictions set forth in this Declaration.

2.6 "Association Water" shall mean and refer to all water or water rights, ditch or ditch rights owned by the Association, including certificated shares in a mutual ditch company.

2.7 "Board" shall mean and refer to the Board of Directors of the Association.

2.8 "Building" shall mean and refer to any single family residence and attached garage, including all fixtures and improvements thereto located on any Lot.

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

2.10 "Canyon View Subdivision" shall mean and refer to Canyon View Subdivision, Canyon View Subdivision – Phase II, Canyon View Subdivision – Phase III, Canyon View Subdivision – Phase IV, Canyon View Subdivision – Phase V and Canyon View Subdivision – Phase VI, as shown as the Plats.

2.11 "Common Elements" shall mean and refer to that portion of the Property, including any Improvements thereto, owned by the Association in fee simple.

2.12 "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions.

2.13 "Family" shall mean and refer to any number of persons related by blood, marriage, guardianship or adoption and living together in the same house as a single housekeeping unit.

2.14 "Improvements" shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, signs, objects of art, mailboxes, irrigation facilities such as pumps, pipelines and sprinklers, tree houses, children's play equipment, solar panels, wind turbines and other structures or landscaping of every type and kind located on the Property.

2.15 "Lot" shall mean and refer to that part of the Property owned in fee simple by the Owners. The boundaries of each Lot, and an identifying number for each Lot, are reflected on the Plats.

2.16 "Member" shall mean and refer to a person or entity which is a member of the Association by ownership of one or more Lots.

2.17 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2.18 "Plats" shall mean and refer to those plats of the Property recorded in the Mesa County Clerk and Recorder's official records, which are the Plat for Canyon View Subdivision, recorded May 23, 1994 in Plat Book 14 at Page 223, Reception No. 1683108, of the records of the Mesa County Clerk and Recorder; Plat for Canyon View Subdivision – Phase II, recorded May 5, 1995, in Plat Book 14 at Page 343, Reception No. 1716390, of the records of the Mesa County Clerk and Recorder; Plat for Canyon View Subdivision – Phase III, recorded May 9, 1996, in Plat Book 15 at Page 77, Reception No. 1756087 of the records of the Mesa County Clerk and Recorder; Plat for Canyon View Subdivision – Phase IV, recorded December 31, 1996, in Plat Book 15 at Page 233, Reception No. 1783541, of the records of the Mesa County Clerk and Recorder; Plat for Canyon View Subdivision – Phase V, recorded April 14, 1997, in Plat Book 15 at Page 286, Reception No. 1794929, of the records of the Mesa County Clerk and Recorder; and Plat for Canyon View Subdivision – Phase VI, recorded December 18, 1997, in Plat Book 16 at Page 56, Reception No. 1824920, of the records of the Mesa County Clerk and Recorder.

2.19 "Property" shall mean and refer to all of the real estate located within the area described as Canyon View Subdivision.

2.20 "Subdivision" shall mean and refer to the common interest community created by this Declaration as shown on the Plats consisting of the Property, the Lots and the Common Elements.

### ARTICLE III GENERAL DECLARATION

3.1 Intent. By making the Declaration hereunder, Owners specifically intend to enhance, perfect and preserve the value, desirability and attractiveness of the Property and to provide for the maintenance of the Common Elements and Improvements and Buildings thereon in a manner beneficial to all Owners. Owners also intend to submit the Property to the provisions of the Act.

3.2 Estate Subject to Declaration. By this Declaration, Owners expressly intend and do 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, 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. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

3.3 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 and the Articles and Bylaws of the Association. Any Owner may delegate his or her right of enjoyment to the Common Elements and facilities for the members of his or her family, tenants, guests, invitees or contract purchasers.

3.4 Easements. Easements for installation and maintenance of utilities, drainage facilities and irrigation water are reserved as shown on the Plats. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow, obstruct or retard the flow of water in and through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except those Improvements for which a public authority or one or more utility companies may be responsible.

3.5 Conflict Among Governing Documents. In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration relating to Canyon View Subdivision, or any question of interpretation or application of the provisions of this Declaration in any of the other governing documents, this Declaration shall control. In the event of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control. In the event of any conflict between any provision of any rules and regulations adopted by the association, and any provisions of the other governing documents, the provisions of any such rules and regulations shall be deemed to be superseded by the provisions of any other governing document, to the extent of any such conflict. For the purposes of this section, governing documents shall mean this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association and any rules and regulations adopted by the Association.

#### ARTICLE IV LAND USE AND BUILDING RESTRICTIONS

##### 4.1 Use of Lots.

A. Lots shall be used only for residential purposes. Only single family dwellings, attached private garages for not more than three (3) cars, and other

outbuildings directly incidental to residential use shall be erected, altered, placed or permitted to remain on any lot. At no time shall any residence be occupied by more than one (1) Family. A caregiver providing health care and living assistance shall be permitted to live in single family dwellings.

B. The use of a Lot for more than one dwelling per Lot and the resubdivision of a Lot into smaller units is prohibited. The combination of Lots into one building site is permitted. For example, two Lots may be combined into one building site.

#### 4.2 Building Restrictions.

A. All construction within the Subdivision shall be new construction or replacement construction and shall be subject to ACC approval. No previously erected or prefabricated building, structure or improvement, including, but not limited to, modular buildings, shall be moved and set upon any Lot from any other location.

B. The ground floor area of the main structure on any lot, exclusive of open porches and patios and garages, shall be not less than 1,800 square feet, outside measurement, whether or not the structure has a basement. If the structure has a second story, the ground floor area of the main structure, exclusive of open porches and patios and garages, shall not be less than 1,400 square feet, outside measurement, with a total living area of the first and second floor of not less than 2,000 square feet, outside measurement. If the structure is a split-level design, the greatest outside measurement, exclusive of open porches and patios and garages, shall be used to determine the square footage and, therefore, different floor levels which are superimposed on each other shall be included only once in such measurement.

C. Building Locations. Building locations for Canyon View Subdivision shall be as follows.

i. Phase I:

a. No Building shall be located on any Lot nearer than 50 feet from the front property line, unless the front property line is a cul de sac radius (45 feet from center of cul de sac) where no building shall be located nearer than 35 feet from the front property line (80 feet from center of cul de sac) unless a variance is granted by the ACC.

b. No Building shall be located on a Lot nearer than 15 feet to any side yard property line or nearer than 30 feet from any rear property line.

ii. Phase II:

a. No building shall be located on any Lot nearer than 45 feet from front property line, unless front property line is a cul de sac radius (45 foot radius from center of cul de sac) where no building shall be located nearer than 35 feet from front property line, unless a variance is granted by the ACC.

b. No building shall be located on any Lot nearer than 15 feet to any side yard property line or nearer than 30 feet to any rear property line, unless a variance is granted by the ACC.

iii. Phase III:

a. No building shall be located on any Lot nearer than 35 feet from the front property line, except that for Lots 8 and 9 in Block 1 and Lots 7 and 8 in Block 2, the front set back shall be 30 feet and for Lot 9, Block 2 and Lot 1, Block 3, the front set back shall be 25 feet.

b. No building shall be located on any Lot nearer than 15 feet to any side yard property line except Lot 1, Block 1 and Lot 1, Block 2 which require a 30 foot side set back along the East property line which abutts the South Camp Road right-of-way. No building shall be located nearer than 25 feet to any rear property line.

iv. Phase IV:

a. No building shall be located on any Lot nearer than 40 feet from the front property line; unless the front property line is a cul de sac, where no building shall be located nearer than 30 feet from the front property line.

b. No building shall be located on any Lot nearer than 15 feet to any side yard property line. No building shall be located nearer than 30 feet to any rear property line, except Lot 9, Block 2, where no building shall be located nearer than 20 feet to any rear property line.

v. Phase V: Buildings shall be located on the Lots as follows:

Setbacks (measured from the property line):

Standard Front: 35'

Front Exceptions: 30' Lot 2, Block 1

Lot 1, Block 2  
 Lot 2, Block 2  
 Lot 12, Block 2  
 Lot 13, Block 2  
 Lot 14, Block 2  
 45' Lot 9, Block 2  
 Lot 10, Block 2

Interior Side: 15'  
 Exterior Side: 20' Street side on Redcliff Cr. or Sienna Ct.  
 Lot 8, Block 2, with respect to the arc of  
 the cul de sac

Standard Rear: 25'

vi. Phase VI: Buildings shall be located on the Lots as follows:

Setbacks (measured from the property line):

Standard Front: 35'  
 Front Exceptions: 25' Lot 7, Block 1  
 Lot 7, Block 2, with respect to Redcliff Drive  
 Lot 6, Block 3  
 30' Lot 1, Block 2  
 Lot 1, Block 3  
 Lot 2, Block 3  
 Lot 3, Block 3  
 Lot 4, Block 3  
 Lot 5, Block 3  
 45' Lot 2, Block 1  
 Lot 3, Block 1  
 Lot 4, Block 1  
 Lot 5, Block 1  
 Lot 6, Block 1  
 Interior Side: 15'  
 Exterior Side: 20' Street side on Redcliff Drive, Redcliff Circle,  
 or Granite Falls Way

Standard Rear: 25'  
Rear Exceptions: 20' Lot 7, Block 1  
Lot 6, Block 3

With respect to Lots 2, 3, 4, 5 and 6, all in Block 1, no building shall be located within the boundaries of any drainage easement shown on the plat of the property.

D. Structures on Lots adjacent to South Camp Road right of way shall not exceed one story in height.

E. Because of the proximity to the Colorado National Monument and the need to maintain Class 1 air quality standards, fireplaces and stoves using fuels other than natural gas, propane or electricity are prohibited.

F. Only, heavy textured composite asphalt shingles or tile roofing are permitted. All roof materials are subject to the approval of the ACC.

G. All structures shall have stucco, wood or masonry exteriors, except that vinyl soffits, fascia and trim are permitted if approved by the ACC. Logs, log siding and sheet siding are prohibited. Front elevations of all Buildings shall have not less than twenty percent (20%) masonry or stone facing the street. Exceptions may be granted where alternate architectural enhancements are provided, at the discretion of the ACC. Stucco exteriors shall be regarded as meeting the masonry requirement, provided there are decorative detail elements, such as window bordering, corner embossing or other rustication detail, as approved by the ACC. No bright colors or garish colors are permitted on the exterior of any structure in the Subdivision. Samples of materials and color strips are to be included at the time of plan submittal for ACC review. Any variance must be approved by the ACC. All exterior building materials used must be approved by the ACC.

H. All residential Buildings shall have a two (2) or three (3) car garage.

I. Roofs shall have multiple gables and/or hips. No four-sided tract-style homes shall be allowed. Multiple roof elevations and more than four corners to the house shall be required.

J. Once the construction of the home has begun, construction of the home must be completed and a certificate of occupancy must be obtained within nine (9) months, unless otherwise approved by the ACC.

K. Roof mounted evaporative coolers, air conditioning units, and HVAC units shall be located over the rear portion of the dwelling, or such other location approved by the ACC where such requirements cannot be met due to technical constraints. Exterior slab-

mounted air conditioning units are allowed, if the location has been approved by the ACC. Window mounted air conditioning units or evaporative coolers are not permitted.

L. No structure of a temporary character, trailer, motor home, teepee, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

M. An Owner shall not change, modify, paint, decorate, alter or in any way make any change to any exterior wall, surface, roof, deck, patio, entry, paving or other Improvements without the approval of the ACC. Repairs, replacement or repainting is permitted without the approval of the ACC so long as there is no change from the existing Improvement or change of color.

N. Outbuildings, where permitted by the ACC, shall be constructed of the same materials and exterior finishes as the primary structure and shall resemble the primary structure in architectural style. Location of outbuildings shall be to the rear of the primary structure and shall be subject to the same setbacks as the primary structure. No outbuildings shall be constructed prior to written approval from the ACC as to location, size, use and materials. Metal or plastic storage sheds are not permitted.

#### 4.3 Maintenance of Lots, Buildings, Improvements and Common Elements.

A. The Owners shall keep, maintain and repair all or any part of their Lots, Buildings and Improvements, including landscaping and vegetation, in a neat, clean, cultivated, attractive and well-maintained condition, free from the accumulation of weeds, trash or debris or visual deterioration. In the event the Owners fail to keep, maintain or repair their Lots, Buildings or Improvements in accordance herewith, the Association shall conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner on whose Lot, Building or Improvements the maintenance or repairs were conducted as a reimbursement assessment pursuant to Section 7.4 hereof. The Association, upon the failure of the Owner of any Lot, to repair or maintain his/her Lot and Improvements, in a reasonably satisfactory and timely manner as determined by the Association, or upon use by the Owner in a manner inconsistent with this Declaration, may enter upon the site and repair, maintain, rehabilitate, and restore the Lot and/or Improvements, or abate the improper use, and any costs incurred shall be charged against the Owner of said Lot and collected in the manner set forth in Article VII hereof.

B. The Owners shall not cause or permit any damage, deterioration or the accumulation of trash and debris upon the Common Elements.

C. The Common Elements shall be owned by the Association and shall remain undivided. By the acceptance of his or her deed or other instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Owner agrees not to institute any such action. Furthermore, each Owner agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the complying Owners to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the complying Owners incur in connection therewith. Further, all Owners covenant that they shall neither by act nor omission seek to abandon, subdivide, encumber, sell or transfer the Common Elements except pursuant to the provisions of the Act pertaining to the sale, conveyance or encumbrance of Common Elements.

D. Each Owner shall be entitled to exclusive ownership of his or her Lot. Each Owner may use the Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

E. No Lot shall be used as a dumping ground for garbage, rubbish or trash. No garbage, rubbish or trash shall be allowed to accumulate on any Lot or the Common Elements. All garbage, rubbish and trash shall be placed and kept in covered containers, except that sanitary yard waste may be placed for collection in secure bags or other containers. All containers shall be kept within garages or enclosed backyards so as to not be visible from the street, except to make the same available for collection during regular trash collection days, and then only for a period of from 6:00 p.m. the day before through 8:00 p.m. on such trash collection day. In addition, items and materials suitable for pick up by the City of Grand Junction during city-wide cleanup programs may be placed as permitted by the City of Grand Junction.

F. No elevated or roof mounted tanks of any kind, including, but not limited to, oil, gas, and water tanks, shall be permitted.

G. Driveways shall be surfaced with concrete or asphalt.

H. Common Walls and Fences. The rights and duties of Owners with respect to common walls or fences shall be as follows:

i. Definition of "Common Wall". Each wall and fence, any part of which is placed on the property line between the Lots, shall constitute a common wall. With respect to any such wall, each of the adjoining Owners shall assume the burden and be entitled to the benefits recited in this section 4.3.H. If a wall or

fence is not located on the property line, the adjoining Owner shall have no responsibility for maintenance of the common wall.

ii. Reciprocal Easements. The Owners of contiguous Lots who have a common wall shall have reciprocal easements for support and an equal right to use the common wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

iii. Repair and Maintenance. Unless other provisions of this section 4.3.H are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall.

iv. Damage by Adjoining Owner. This section applies in the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his/her guests or agents or members of his/her family so as to deprive the other Owner of the full use and enjoyment of such wall. The Owner responsible for the damage shall immediately proceed to rebuild and repair the common wall, or cause it to be rebuilt or repaired, to as good condition as formerly without cost to the other Owner.

v. Damage by Outside Causes. In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his/her agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), both adjoining Owners shall proceed immediately to rebuild or repair the common wall to as good condition as formerly, at their joint and equal expense.

vi. Dispute Resolution. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of applicable costs, then upon written request of one of such Owners delivered to the other such Owner, the matter shall be heard and determined by a mutually-selected arbitrator, under mutually-agreeable rules of procedure. If the parties cannot agree on an arbitrator or on rules of procedure, the Board shall act as an arbitration panel. The arbitrator's decision shall be final and binding on all parties. Each party involved in the arbitration shall share equally the cost of the arbitration.

#### 4.4 Home Occupations and Offensive Activities.

A. No Lot or Building may be used for commercial purposes of any type whatsoever excepting for home occupations as permitted by the City of Grand Junction or



other governing entity. For purposes of this section, "home occupations" shall mean an occupation by the resident conducted entirely within the residential building which does not entail the employment of third persons on the premises, does not entail the delivery of goods or services to customers upon the premises, and does not entail visits by customers to the premises. For example, but not by limitation, an insurance agent may use his or her residence as a personal office so long as his or her customers are not permitted to come to the residence; however, the establishment of a barber shop or a beauty shop would be prohibited.

B. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his or her own vehicle.

C. No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Property.

#### 4.5 Animals.

A. No animals shall be allowed other than domestic pets. Not more than three (3) pets in total shall be kept on any Lot and only then if they are kept solely as household pets for private use and not for commercial purposes. No animal may be kept which is a nuisance or annoyance to other Owners' properties. Owners shall at all times clean up after their pets and bag and dispose of excrement in a trash receptacle. Household pets shall be contained on their Owner's property, on a leash or on voice control, and not permitted to run loose. Household pets shall be under the control of their owners at all times.

B. At the request of any Owner, the Board of the Association shall determine whether a particular animal shall be considered a household pet, a nuisance, or whether the number of any such animals on any Lot is in compliance.

C. Vicious dogs and habitually barking dogs are prohibited in the sole discretion of the Association and without reference to the results of any temperament or other behavioral examination or test.

D. Household pets shall be kept and raised only for private use and not for commercial purposes. No horses or livestock of any type shall be kept on any Lot.

#### 4.6 Parking.

A. All residences shall be constructed so as to provide sufficient off street parking to accommodate not less than four (4) automobiles.

B. No Lot, roadway or easement shall be used as a parking, storage or accommodation area for any type of junk vehicles or vehicles under repair. Only those cars and trucks incidental to residential family use will be permitted within the Property except that emergency and other vehicles shall be permitted to park in accordance with state, local, or other applicable law.

C. Recreational vehicles shall be screened by fences, plantings or otherwise kept from public view. Fences approved by the ACC per the guidelines of Section 4.9 shall be deemed to meet this requirement. No vehicles, boats, campers, trailers, snowmobiles, motorcycles or other recreational vehicles, devices or equipment, or vehicles used for business (other than normal passenger-type vehicles) shall be stored or permitted to remain on the Property unless garaged, placed in an ACC-approved outbuilding, or fenced or screened storage facility, and parked no closer to the front line of the Lot than the Building on the Lot which is closest to the front line of the Lot.

#### 4.7 Landscaping.

A. During the course of construction, all precautions shall be taken to provide for a minimum disturbance of the land. To preserve and enhance the unique character of the Property, native landscaping is encouraged.

B. Noxious trees or other plants, as designated by Mesa County or from another source hereafter adopted by the ACC, shall not be permitted on any Lot.

C. Each Owner shall grade, landscape and plant those portions of their Lot not graded, landscaped or planted on the date such Lot was first conveyed to the Owner, within twelve (12) months after completion of construction of any Building on the Lot. All grading, landscaping and planting performed or conducted by the Owner shall be first approved by the ACC, and once installed in accordance with the approval of the ACC shall not be changed from its appearance. This provision shall not apply to removal of dead or diseased trees, shrubs or other plants.

D. All vegetation, including vegetable gardens, shall be properly cultivated (including watering) and neatly trimmed, garbage and weed free at all times. All Lots require landscaping maintenance. Should the Owner of any Lot fail to comply with landscaping guidelines as set forth herein, the Association may, at its sole discretion, cause such landscaping to be completed upon subject Lot and assess the Owner for all costs incurred.

E. No Owner shall remove, alter, injure or interfere in any way whatsoever with any tree, shrub or other landscaping or Improvement placed upon the Property by or on behalf of the Association except pursuant to authority granted by state, local or other relevant law.

F. No tree, shrub or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or the Plat such as to hinder, or interfere with the purposes for which such easement was created.

G. Trees shall be of a species appearing on the City of Grand Junction approved list for street trees.

4.8 Signs. Signs, including, but not limited to, political campaign signs, shall be permitted upon the Property in such manner, at such times, and with such limitations as are imposed by state, local or other applicable law. Any temporary sign may be placed and removed as provided in the Rules. Unless so permitted, no sign of any kind shall be displayed to the public view on any Lot except a sign of not more than five (5) square feet advertising the Lot for sale or rent, or signs used and erected by a builder to advertise the Property during the period when construction and sales of any dwelling occur. Signs on the Common Elements are governed by the Association. Yard or garage sale signs shall be permitted in accordance with this section and any guidelines and requirements set forth in the Rules.

4.9 Fences. To preserve the open nature and to maintain the scenic views for the benefit of all Owners, no fence shall be erected on a Lot without the approval of the ACC. All fences shall be four (4) feet or less in height, except that fences up to six (6) feet in height may be permitted for placement next to outdoor living areas, such as patios, decks, hot tubs, to provide for privacy or to screen stored vehicles from public view. In addition, fences up to six (6) feet in height are permitted along the South Camp Road right-of-way. All fences, foliage, trees or hedges in the nature of a fence shall be planted, maintained, constructed or erected in compliance with local zoning, building, or other codes or regulations governing fence height and location. Fences shall be constructed of wood, decorative metal earth-toned masonry or earth-toned, textured vinyl. White vinyl fencing is not permitted. All fencing design and material must be approved by the ACC.

4.10 Exterior Lights. In order to preserve the unique character of the Canyon View area, and because of its proximity to the Colorado National Monument, no street lights shall be installed within the Canyon View Subdivision, except at major intersections as defined by the City of Grand Junction traffic standards. Exterior lighting shall not be left on continuously during hours of darkness. Lighting for security may be accomplished by use of motion detector or other sensor. Any such sensors shall be adjusted so that the light will not be activated by movement beyond the property line.

4.11 Holiday and Other Temporary Exterior Lighting. Holiday and other temporary lighting is permitted only for a month before and a month after the holiday or other event for which the lighting is placed.

4.12 Solar Devices/Wind Generation. Solar panels shall be mounted in the least obstructive manner possible. All solar devices and wind generation devices must be approved as to type and location by the ACC. All wind generation devices must be approved by the ACC.

4.13 Satellite Dishes. Satellite dishes larger than 30 inches in diameter shall be screened from view from the streets or sidewalks.

4.14 Miscellaneous.

A. No Lot shall be used in any manner whatsoever to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances or other mineral of any type.

B. All facilities for permanent utilities service shall be kept or maintained underground.

C. No hunting, shooting, trapping or harming of wildlife shall be permitted, it being the intent to conserve and protect all wildlife, provided that any pests may be removed or disposed of in a manner permitted by applicable law.

D. No recreational vehicles, motorcycles, dirt bikes, off-road vehicles, etc. shall be operated in the development at any time except for ingress and egress to and from the development and upon established roads.

## ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

5.1 No Building or exterior Improvement of any kind shall be erected, placed or altered on any Lot until the construction plans and specifications, and a plan showing the location of the Building or Improvement, have been approved by the ACC as to quality of design and methods of construction and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finished grade elevation.

5.2 The ACC shall consist of three (3) to five (5) persons to be appointed by the Board, and who may be members of the Board. The method and manner of the ACC's appointment, replacement and removal, as well as method of operation, to the extent not provided herein, shall be as set forth in the Articles and Bylaws of the Association.

5.3 Duplicate copies of complete plans and specifications, including a construction schedule, relating to a Building or Improvement shall be submitted to the ACC for review and final

approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and a perspective sketch if requested, and other details necessary to explain any feature or component of the Improvements.

5.4 The ACC's approval or disapproval as required in this Declaration shall be in writing. In the event the ACC, or its designated representative, fails to approve or disapprove within thirty (30) days after sufficient plans and specifications have been submitted to it, approval will not be required, and the related covenants shall be deemed to have been fully complied with. Two complete sets of finished plans and specifications for construction shall be submitted at time of application, one (1) copy of which will be retained by the ACC for its records. Approval or disapproval as required in this Declaration shall be determined by majority vote of the members of the ACC.

5.5 The ACC shall make decisions concerning the approval or denial of an Owner's application for architectural review in accordance with the standards and procedures set forth in this Declaration, or in duly adopted rules, regulations, policies or procedures, and shall not be made arbitrarily or capriciously. Notwithstanding the foregoing, 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 action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request to the fullest extent permitted by law. The actions of the ACC shall be deemed conclusively binding upon the Owners.

5.6 Neither the members of the ACC, nor such representatives as it may designate, shall be entitled to any compensation for services performed pursuant to this Declaration.

5.7 In addition to all the other criteria herein set forth, the ACC shall generally determine whether the proposed Improvement will protect the then value and future values of the Property then located in the Subdivision and to be erected therein. The ACC shall, in the exercise of its judgment and determination, use reason and good faith. Among the other considerations applied, the ACC will determine and base its approval or rejection upon the fact of whether said proposed Improvements are reasonably compatible with other Improvements erected and planned in the Property. The ACC shall evaluate the proposed construction as to location of the Property, harmony of exterior design, materials and colors with existing dwellings and surroundings, finished grade evaluation and other criteria as it deems necessary for the purposes set forth in this article.

ARTICLE VI  
THE ASSOCIATION

6.1 Purpose and Membership. By acceptance of a deed to a Lot, each Owner shall be a member of the Association, which is a Colorado nonprofit corporation, organized for the general purpose of being and constituting an entity for the furtherance of the mutual interests of the Owners of the Property pursuant to this Declaration and the Articles and Bylaws, including, without limitation, enforcement of the Declaration and any Rules adopted by the Association; owning, repairing and maintaining the Common Elements; maintenance and use of any Lots, Buildings and Improvements; levying and enforcing assessments to defray the cost and expenses of operation; and, providing other utilities and services pursuant to the Articles and Bylaws. This is a common interest community as defined by the Act. The business of the Association will be conducted according to the Act.

6.2 Directors of the Association. The affairs of this Association shall be managed by a board of Directors (the "Board"). Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

6.3 Voting Rights.

A. A membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

B. The Association shall have one class of voting membership, each Owner being entitled to vote one (1) 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 determines, but in no event shall more than one (1) vote be cast with respect to any Lot.

6.4 Limitation Upon Liability. Notwithstanding the duty of the Association to maintain and repair parts of the Property, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Property or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

6.5 Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance, to the extent reasonably available:

A. Property insurance on the Common Elements and also on property that may become a Common Element for broad form covered causes of loss; except that the total amount of insurance must be not less than the 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 policies.

B. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, in an amount, deemed sufficient in the judgment of the Board, but in any event not less than the amount, if any, specified in this Declaration, insuring the Board, the Association, the managing agent, if any, and their respective employees, agents, and all persons acting as agents. The Owners shall be included as additional insureds 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 (1) or more insured parties against other insured parties.

C. Insurance policies carried pursuant to both immediately preceding subsections of Section 6.5 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 his or her household;

iii. No act or omission by any 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 coverage upon employees.

E. Such other insurance as the Board may deem desirable for the benefit of the Owners.

#### 6.6 Ownership and Maintenance.

A. 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 Section 7.2 hereof.

B. The Association may undertake the maintenance, repair and restoration to any Improvement located on any Lot provided the Owner thereof fails to repair, restore or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Section 7.4 hereof.

6.7 Association Water.

A. All irrigation water to be furnished to the Property shall be furnished by the Association. All Owners of Lots with lawns shall be required to install sprinkler systems to maintain their lawns. The Association shall have the right to limit the use of irrigation water as it determines in its sole discretion to the Lots and Common Elements and may institute and enforce rules regarding which days irrigation water may be used for any given Lot.

B. The irrigation facilities owned by the Association consist of a holding pond, irrigation pumps, pump house, a system of pipes and pipelines as to provide irrigation water to the Common Elements and all Lots and head valves at the delivery point to each Lot. The irrigation facilities, including any easements in connection therewith, shall be solely owned, operated and maintained by the Association.

C. It shall be the obligation of the Association to own, operate, maintain and repair the irrigation facilities for the distribution of water to the Common Elements and all Lots. Each Owner shall be responsible for operation, maintenance and repair of the sprinkler system installed on their lot. Each Owner shall be responsible for the expense, or any repair, maintenance or replacement, of the head valve for the Owner's Lot.

D. The Association shall have an easement across all Common Elements and Lots as reasonably necessary to operate, maintain, and repair the irrigation facilities.

6.8 Duty of Association. The Association shall have the duty of maintaining and repairing all of the Common Elements within the Property. The cost of all such maintenance shall be a common expense to all of the Owners. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

6.9 Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and the Articles of Incorporation and amendments, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.



- A. Maintenance, repair and restoration of the Common Elements, except only as otherwise provided.
- B. The obtaining and maintaining of all required insurance as provided herein.
- C. Collection of assessments for irrigation water and maintenance and repair of the irrigation system.
- D. Adoption and amendment of rules, regulations and fine schedule for the governance of the Subdivision.

6.10 Limitation of Liability/Indemnification. The liability of a director to the Association and its members shall be limited to the fullest extent permitted by Colorado law. The Association shall indemnify and advance expenses to a director or officer of the Association in connection with a proceeding to the fullest extent permitted by the Colorado Nonprofit Corporation Act, as such may be amended or reenacted. With respect to an employee, agent or committee member other than a director or officer of the Association, the Association may, as determined by the Board of Directors, indemnify and advance expenses to such employee or agent in connection with a proceeding to the extent permitted by the Colorado Nonprofit Corporation Act, as such may be amended or reenacted.

6.11 Rules and Regulations. The Board may adopt, amend or repeal rules and regulations which shall govern the use and occupancy of the Property (the "Rules"), which may include a schedule of fines that may be imposed for violation of the Rules or this Declaration. The Rules shall be adopted, amended or repealed at a regular or special meeting of the Board upon a majority vote of all of the Directors and shall take affect not less than thirty (30) days following written notice to the Owners. The Rules are incorporated herein by this reference, and shall have the same force and effect as this Declaration.

## ARTICLE VII ASSESSMENTS

7.1 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 this 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.

7.2 Regular Assessments.

A. 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, 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, water share assessments, landscaping and care of grounds, 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 7.2.B hereof, the sum or net estimate so determined shall be assessed to the Owners as an operation and maintenance assessment 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. Assessments shall be paid in one (1) annual installment due on or before the March 31 of each year, unless the Board resolves to collect assessments in periodic installment payments.

B. Within thirty (30) 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 ten (10) nor more than fifty (50) 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.

7.3 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 further assessment in the amount of such actual or estimated inadequacy, following the procedures outlined in Section 7.2.B above. 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 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.

7.4 Reimbursement Assessment. The Board may levy an assessment against any Owner as a result of such Owner's failure to landscape his or her Lot, including installation of a sprinkler system, rebuild damaged Improvements or to restore or maintain his or her Lot or the Improvements located thereon. Such assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses incurred for the repair, maintenance or restoration of such Owner's Lot or Improvements, and shall be due and payable to the Association when levied.

7.5 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.

7.6 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, landscaping or personal property related thereto, provided that such assessment shall have the assent of a majority of the members of the Association subject to the assessment. Capital Improvement assessments shall be levied in accordance with the procedures outlined in Section 7.2.B, above.

7.7 Enforcement. In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

A. The Association may elect to accelerate and declare immediately due and payable the remaining balance of any regular or special assessments for such fiscal year which the Board has resolved should be collected in periodic installment payments.

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

C. All delinquent assessments shall be a lien on the Owner's Lot to which the provisions of section 38-33.3-316, C.R.S., shall apply.

D. Beginning with second month of delinquency, interest will be charged at a rate of twenty-one percent (21%) per annum on all delinquent amounts each month until payments are current.

ARTICLE VIII  
CASUALTY, DAMAGE AND REPLACEMENT OF IMPROVEMENTS

8.1 Owner's Insurance. All Owners shall keep and maintain fire and casualty insurance upon all Improvements located on their Lots to the full insurable value thereof, and shall provide a certificate of insurance to the Association upon request, not less than ten (10) days after such request, such certificate providing for not less than thirty (30) days' written notice of cancellation, surrender or modification.

8.2 Loss, Damage or Destruction of Improvements Other Than Buildings. In the event of a loss, destruction or damage to any Improvements located on any Owner's Lot exclusive of the residential building, such Owner shall, after first obtaining the approval of the ACC, replace, repair or restore such damaged Improvement with an identical Improvement as to the one destroyed, lost or damaged. In the event an Owner fails to make such repair, replacement or restoration within ninety (90) days of the loss, damage or destruction, the Association shall have the option to make such repair, restoration or replacement and charge the cost thereof to the Owner as a reimbursement assessment.

In the event of loss, damage or destruction of any Improvement located upon the Common Elements, the Association shall within ninety (90) days of such loss, damage or destruction, replace, repair or restore such Improvement with an identical Improvement.

8.3 Loss, Damage or Destruction to Buildings. In the event of loss, damage or destruction of any residential building, the Owner thereof shall repair, restore or rebuild the same within one (1) year following such damage or destruction. The new structure shall be rebuilt in the same location, following the same floor plan and elevation and using the same exterior materials and stain as the building which had been lost, damaged or destroyed. It is the specific intent of this section to impose upon the Owner of each Lot, the obligation to replace any destroyed building with a new building having the identical appearance as the building destroyed and the other residences within the Properties. Further, following completion of the repair, restoration or replacement of the damaged structure, the Owner shall repair, replace or restore any landscaping or other Improvements involved in the damage, destruction or loss to the residents within ninety (90) days of completion of the structure. However, in the event completion is after September 1<sup>st</sup> of any year, landscaping shall be completed by May 1<sup>st</sup> of the following calendar year.

ARTICLE IX  
EFFECTIVE DATE/APPLICABILITY

This Declaration shall be effective as of the date of this Declaration. All Improvements completed or installed as of January 21, 2009 shall be deemed to be in compliance with this Declaration. The terms and conditions of Section 4.2 (Building Restrictions) shall apply to all new and replacement construction of Improvements on and after January 21, 2009. For the purposes of this Article 9, "replacement construction" shall mean replacement or repair of an existing Improvement where more than fifty percent (50%) of the Improvement was damaged or destroyed.

ARTICLE X  
ENFORCEMENT

10.1 The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as such may be amended. The prevailing party in any action to enforce or interpret this Declaration, the Articles of Incorporation, Bylaws and rules and regulations of the Association, as such may be amended, shall be awarded that party's attorneys' fees and costs. The Association shall have the right to levy and collect fines for the violation of any provision of this Declaration, the Articles of Incorporation, Bylaws, rules and regulations of the Association, as such may be amended, and shall be entitled to collect the same in any action brought under this Article. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

10.2 Any Building, Improvement or Landscaping that is constructed, erected or maintained in violation of this Declaration shall be removed by or at the expense of the Owner, at the discretion of the Association.

ARTICLE XI  
GENERAL PROVISIONS AND MISCELLANEOUS

11.1 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.

