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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
EVENING BREEZE SUBDIVISION, FILING NO. 1**

THIS DECLARATION ("Declaration") is made this 10<sup>th</sup> day of May, 1999 by Raymond L. Oellrich ("Declarant");

**RECITALS**

A. Declarant is the owner of real property ("Property") in the City of Fruita, County of Mesa, State of Colorado, legally described as follows:

Lots 1 through 6 of Block 1, and Lots 1 through 5 of Block 2, Evening Breeze Subdivision, Mesa County, Colorado.

B. Declarant desires to impose a general plan for the improvement, development and maintenance of the Property, and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enhancing, maintaining and protecting the value and desirability of the Property.

C. Declarant deems it desirable to set aside a portion of the Property as common area for the use of the owners of the Property, and to establish a Colorado nonprofit corporation, Evening Breeze Homeowners Association (the "Association"), to which such common area from time to time shall be conveyed.

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

**ARTICLE I  
DEFINITIONS**

Section 1.01. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.02. "Association" shall mean and refer to Evening Breeze Homeowners Association, a nonprofit corporation, incorporated under Colorado law.

Section 1.03. "Association Water" shall mean and refer to all shares of the capital stock of Grand Valley Irrigation Company, any interest in the Elmwood Lateral Ditch Co., Inc., and any other water or water rights, ditch or ditch rights, reservoir or water storage rights appurtenant to any portion of the Property or used in connection with any portion of the Property and owned or controlled by the Association.

Section 1.04. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.05. "By-Laws" shall mean the By-Laws of the Association as they may be amended from time to time.

Section 1.06. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at C.R.S. §38-33.3-101, et seq., as it may subsequently be amended from time to time.

Section 1.07. "Common Area" shall mean any and all real property, and the improvements and fixtures on it owned or leased by the Association for the common use and enjoyment of the Members, plus any street or other lighting fixtures owned or controlled by the Association and signage on any Common

Area or for the general benefit of the Subdivision or Owners, whether or not located in the Common Area. The Common Area shall be as shown on the recorded plat of the Property and described in the Map.

Section 1.08. "Common Expenses" shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.09. "Conveyance" shall mean and refer to conveyance of a fee simple title, or lease of any part of the Property.

Section 1.10. "Declarant" shall mean and refer to Raymond L. Oelrich, his successors and assigns designated in writing to be the successor of Declarant, subject to any limitation on transfer of special declarant rights contained in this Declaration or CCIOA.

Section 1.11. "Lot" shall mean and refer to each numbered lot of the Property described in the Map as recorded and amended. Boundaries of a Lot shall be as shown and defined on the Map.

Section 1.12. "Member" shall mean and refer to every person or entity who holds a membership in the Association as provided in Article II, Section 2.01.

Section 1.13. "Mortgage" shall mean any mortgage or deed of trust or other conveyance or encumbrance of a Lot, or any interest in it, including, but not limited to, the improvements on it, to secure the performances of an obligation.

Section 1.14. "Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of a Mortgage, and the holders of any indebtedness secured by a Mortgage.

Section 1.15. "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust which are Mortgages.

Section 1.16. "Owner" shall mean and refer to Declarant and to any other person or entity holding a record fee simple ownership interest in any Lot which is a part of the Property, including contract purchasers and lessees with enforceable options to purchase, but excluding Mortgagees (unless and until a Mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.17. "Subdivision" shall mean all of the Property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

Section 1.18. "Assessment" shall mean and refer to any or all of the following:

- (a) "Regular Assessment" shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot as provided for in Section 4.05 of this Declaration.
- (b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association or Declarant for materials or services furnished to the Owner or his Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration specifies the imposition of a special assessment.
- (c) "Capital Improvement Assessment" shall mean and refer to a charge against any Lot representing a portion of the Association's cost for the installation, construction, expected or unexpected repair or replacement of any capital improvement (including the necessary fixtures and personal property related to it) on the Common Area or any other portion of the Property, upon which the Association may be required to install, maintain, repair or replace any capital improvements as provided in this Declaration, including without limitation, the Irrigation Facilities, and reserves for repair or replacement of existing capital items and acquisition, construction, and installation of new improvements.

Section 1.19. "Residence" means the single family dwelling unit located on a Lot.

Section 1.20. "Irrigation Facilities" shall mean and refer to all improvements, equipment, facilities, and other real and personal property owned, operated, or maintained by the Association for the purpose of delivering water to the Lots and Common Area for irrigation purposes, and shall include, but not be limited to, all pumps, pipes, pipelines, risers, connectors, controls, siphons, filters, valves, and related parts and materials located in, under, or upon easements within the Subdivision, or elsewhere outside of the Subdivision. Irrigation Facilities shall not include the "stub out" or "lateral" pipelines which extend beyond the exterior of the irrigation and maintenance easement or street, as the case may be, within the Subdivision and into each Lot.

Section 1.21. "Map" or "Plat Map" means the plan map of the Property attached to this Declaration pursuant to the requirements of CIOA and includes the plat of the Property if a separate plat is attached to this Declaration. THIS MAP MAY BE CHANGED IN THE FUTURE AND DOES NOT MEAN THE SUBDIVISION OF LOTS SHOWN HAS BEEN APPROVED BY ANY GOVERNMENTAL AUTHORITY.

**ARTICLE II**  
**THE ASSOCIATION**  
**MEMBERSHIP; VOTING RIGHTS; DECLARANT CONTROLS**

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

Section 2.02. Allocation of Votes. Each Lot shall be allocated one vote in the Association, subject to Section 2.06 below.

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

Section 2.04. Membership Appurtenant. Subject to an Owner's consent by accepting a deed to a Lot or other instrument the acceptance of which would render the holder an Owner pursuant to Section 1.16, Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by conveyance of a Lot without additional action or documentation.

Section 2.05. Directors of the Association. The affairs of the Association shall be managed by a board of two (2) directors initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 2.06(a), the Board shall be managed by not less than three (3) nor more than five (5) directors, as established by the By-Laws of the Association.

Section 2.06. Management of the Association.

- (a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (a) ten (10) years after the date of recording of this Declaration in the offices of the Mesa County, Colorado Clerk and Recorder; (b) sixty (60) days after conveyance of 75% of the Lots to Owners other than Declarant; or, (c) two (2) years after the most recent conveyance of a Lot by Declarant in the ordinary course of business, Declarant may appoint and remove all Association officers and all members of the Board of Directors of the Association, subject to the limitations stated in this section.
- (b) Not later than sixty (60) days after conveyance of 25% of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not fewer than 25% of the members, of the Board of Directors must be elected by the Owners of Lots other than Declarant.
- (c) Not later than sixty (60) days after conveyance of 50% of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, not fewer

than 33-1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.

- (d) Upon the termination of the period of Declarant control specified in subsection 2.06(a) of this Article, the Owners shall elect a Board of Directors in accordance with Section 2.05, who must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.
- (e) Notwithstanding anything to the contrary stated elsewhere in this Section 2.06, by a vote of sixty-seven percent (67%) of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a member appointed by Declarant.

**Section 2.07. Quorum.** A quorum will be deemed present throughout any meeting of the Association if persons entitled to cast 20% of the votes which may be cast for election of the Board of Directors of the Association are present in person or by proxy at the beginning of the meeting. A quorum will be deemed present throughout any meeting of the Board of Directors of the Association if persons entitled to cast 50% of the votes on the Board are present at the beginning of the meeting.

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

**Section 3.01. Title to the Common Area.** As soon as practicable, but not later than 60 days after the formation of the Association, Declarant shall convey fee simple title to the Common Area, if any, to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and liens and encumbrances and other title exceptions of record on the date of recording of this Declaration.

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

- (a) The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area;
- (b) The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Area or any part of it for the purpose of improving the Common Area, provided any such encumbrance shall be expressly subordinate to the rights of the Members;
- (c) The right of the Association to suspend a Member's voting rights and Common Area use for any period during which any Assessment against his Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; provided that any suspension of such voting rights, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee of the Association, after notice and hearing given and held in accordance with the By-Laws of the Association;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; no such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members entitled to cast two-thirds of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than (60) days in advance; and
- (e) The right of Declarant or his designees to enter upon the Common Area for purposes of construction and development of the Subdivision and for purposes of

making repairs and remedying construction defects; provided such entry shall not unreasonably interfere with the use and enjoyment of any Lot upon which a Residence has been constructed, unless authorized by the Lot Owner.

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

Section 3.04. Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association nor release the Lot owned by him from the liens and charges created by CCIOA and this Declaration, by waiver of the use and enjoyment of the Common Area or the facilities on it or by abandonment of his Lot.

Section 3.05. General Restrictions. All Owners of Lots by their acceptance of their respective deeds, covenant and agree that the Common Area shall remain undivided, and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of Owners with respect to the operation and management of the Property.

Section 3.06. Use of Outlot "A," Block 2. Despite anything to the contrary stated elsewhere in this Declaration, Outlot "A," Block 2, shall not be Common Area and shall be used for open space and, as shown on the Map, will be dedicated to the City of Fruita, Colorado by appropriate dedication on the Map. The Association shall not have any duty to maintain the area dedicated to the City of Fruita under this Section. Declarant will execute and deliver all contracts, deeds or other documents necessary to complete the Dedication described in this Section.

**ARTICLE IV  
COVENANT FOR ASSESSMENTS**

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The undersigned, for each Lot within the Property (including any Lots subsequently added under Section 14.05 below), covenants (and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in that deed, is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; (b) all fees, charges, late charges, attorneys fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by Section 38-33.3-316(1), C.R.S. or any other provision of CCIOA (as it may be subsequently amended) or by any other applicable law. The Association shall have the right, independent of CCIOA, to impose reasonable charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, Association By-Laws, and the rules and regulations of the Association.

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

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

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

Section 4.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety, or welfare of the residents in the Property; or for the benefit of the Common Area or Association Water; or for any other purpose of the

Association, as those purposes (as amended from time to time) are specified by this Declaration, the Articles of Incorporation of the Association; or as otherwise authorized by CCIOA or other applicable law.

Section 4.03. Initial Assessment.

- (a) The initial Regular Assessment for Common Expenses of the Association shall be fixed in an amount set by, and made upon the resolution of, the Board of Directors of the Association.
- (b) After any Assessment has been made by the Association, Regular Assessments shall be made no less frequently than annually, based on a budget adopted by the Association as described elsewhere in this Declaration. Assessments may include, without limitation, Capital Improvement Assessments and allocations for reserves for repair or replacement of existing capital items and acquisition, construction, and existing capital items and acquisition, construction, and installation of new improvements, all to the extent set forth in the approved budget upon which such Assessment is based.
- (c) Until the Board of Directors of the Association makes an Assessment, all expenses of the Association shall be paid by Declarant.

Section 4.04. Date of Commencement of Assessments: Due Dates. The first Regular Assessment for Common Expenses shall be adjusted according to the number of months remaining in the calendar year for which the Assessment is made, if less than a full year. Thereafter, the Board shall fix the amount of the annual Regular Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Regular Assessment shall be sent to every Owner subject to the Assessment. The due date(s) shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Special Assessments and Capital Improvement Assessments may be made by the Board at any time, except as limited by the Declaration, CCIOA or other applicable law.

Section 4.05. Expense Allocation. Except as otherwise stated in this Section, or as otherwise provided by CCIOA or other applicable law, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of Lots then in the Subdivision. If permitted by CCIOA or other applicable law, any Common Expense or portion of any Common Expense benefiting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

Section 4.06. Priority of Lien. The lien for Assessments, which includes without limitation all those items specified in item (a) and (b) in Section 4.01 of this Article IV shall have the priority specified in CCIOA which, at the date of the Declaration, is codified at Section 38-33.3-316(2), C.R.S., or other applicable law.

**ARTICLE V  
BUDGET AND RECORDS**

Section 5.01. Books and Records. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association. All books, records, and papers of the Association shall be available for inspection and copying by any Member or his representative during regular business hours at the principal office of the Association. The Board of Directors may establish reasonable rules concerning notice to be given to the custodian of the records by anyone desiring to inspect them, and payment of reproduction costs by the requesting Member.

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

Section 5.03. Delivery of Budget. Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall mail (by ordinary first-class mail) or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary.

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

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

**Section 5.06. Reserve Fund.** As part of each annual budget, the Board of Directors shall include an amount which, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the repair or replacement of any personal property, fixtures, and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost, and any other relevant factors.

## **ARTICLE VI NONPAYMENT OF ASSESSMENTS**

**Section 6.01. Delinquency.** Any Assessment provided in this Declaration which is not paid when due is delinquent. If any such Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at a rate not to exceed the maximum rate of interest (presently 21% per annum) permitted by CCIOA or other applicable law, as determined by the Board. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same and/or, upon compliance with the notice provisions set forth in Section 6.02 below, foreclose the lien provided in Section 4.01 above against the Lot(s) as to which the Assessment has not been paid; and in either case there shall be added to the amount of such Assessment, interest and all costs which may be incurred by the Association in its collection of the Assessment, including reasonable attorney's fees. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

**Section 6.02. Foreclosure Sale.** Any foreclosure sale related to an Assessment lien is to be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same in the name of the Association.

**Section 6.03. Curing of Default.** Upon the timely curing of any Assessment delinquency the Association is authorized to file or record a certificate setting forth the satisfaction of such claim and release of such lien, upon payment by the defaulting Owner of a fee determined by the Association to cover the costs of preparing and filing or recording such release, and other expenses incurred.

**Section 6.04. Cumulative Remedies.** The Assessment lien and the rights of foreclosure and sale under it shall be in addition to, and not in substitution of, all other rights and remedies which the Association and its assigns may have under this Declaration and then applicable law, including without limitation a suit to recover a money judgment for unpaid Assessments, as above provided.

## **ARTICLE VII ARCHITECTURAL CONTROL**

**Section 7.01. Architectural Approval.** No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Property (including the Common Area), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, irrigation systems, fences, trash receptacles) be made until plans and specifications showing the nature, kind, shape, height, materials, location and other relevant information of the same have been submitted to and approved in writing by the Architectural Control Committee (the "Committee" -- See Section 8) as in harmony with external design and location in relation to surrounding structures, topography and other matters specified in this Article VII. Except, however, this Section shall not be construed to grant the Committee the discretion to deviate from the mandatory requirements contained within Sections 7.06 through 7.13, unless such discretion is specifically allowed in any of those Sections. The Declarant and any successor Declarant shall not be required to comply with Sections 7.02, 7.03, 7.04, 7.05 and 7.14 of this Article VII. In the event the Committee fails to approve or disapprove such plans in writing within thirty (30) days after a plan has been submitted to it, the plans will be deemed to have been approved.

**Section 7.02. Plan Submittal Procedure.** All plans and specifications required to be submitted to the Committee under Section 7.01 must be submitted in the form of a complete application. A complete application shall mean submission by the Owner of three copies of finished working drawings and specifications complying with provisions outlined in this Article.

**Section 7.03. Plan Requirements.** Residence plans must consist of: exterior elevations and colors, a plot plan including property lines, set backs, easements, structures, driveways, any accessory structures, fences, proposed grading, plus floor plans indicating square footage.

**Section 7.04. Permits and Fees.** The Owner shall apply for and pay all fees for all permits and inspections required by the governing authorities and codes for any improvements covered by this Article VII.

**Section 7.05. Completion.** Approved projects must be completed within six (6) months after issuance of a building permit or within six months after approval by the Committee if no building permit is required. If the work is not completed within the prescribed time, the Committee may rescind its approval and resubmission will be required. The Committee may grant an extension under extenuating circumstances brought to its attention.

**Section 7.06. Building Size.** In considering the design of proposed improvements, the Committee shall consider, without limitation, maintaining compatibility with the natural setting of the Property and not permitting any proposed Residence or other improvement to dominate the surrounding Residences and area. A Residence shall be no more than one level; provided, however, that a Residence may be equipped with an engineered basement. Each Residence shall consist of at least 1100 square feet of heated living area (excluding the garage, enclosed patios and decks, attics unheated storage areas, and basement).

**Section 7.07. Repetition of Residence Design.** The exterior design of a Residence shall not be repeated within three (3) adjacent Lots. Lots separated by a street are not considered adjacent; however, no two Residences directly opposite one another on a street shall have the same exterior design. A design can be used within the three adjacent lots if the exterior design is substantially changed. Such substantial change shall include, but need not be limited to: roof configuration, siding, window location, window sizes, garage door and front entrance. The Committee, in its sole and absolute discretion, will have the right to decide if the design meets these requirements.

**Section 7.08. Exterior Colors.** Only semi-transparent or solid colors in moderate hues are acceptable, and must be approved by the Committee. The color combination for the body and trim of a Residence may not be repeated by any other Residence located within two (2) Lots of the subject Residence. Lots separated by a street are not considered within two (2) lots of the subject Residence; however, no two Residences directly opposite one another on a street shall have the same color combination for the body and trim.

**Section 7.09. Roofs.** Roofs must be architectural asphalt shingle with at least a twenty five (25) year life, unless otherwise approved by the Committee. A minimum five in twelve pitch shall be maintained on all roofs. All roof colors must be of a moderate hue as approved by the Committee.

**Section 7.10. Exterior Walls.** All elevations of each Residence shall be of cedar, redwood, oriented stranded board or other approved wood in a tongue and groove, lap siding, or board and bat pattern, or of a masonry or stucco veneer. All Residences shall have at least twenty (20) percent brick, rock, stone or comparable material approved by the Committee on any surface that faces a street. A Residence of which the walls are primarily composed of masonry or stucco shall be exempt from the foregoing twenty (20) percent requirement.

**Section 7.11. Windows.** Windows shall be of a design and color complementary to the exterior of the Residence. Window frames of mill finished aluminum will not be allowed.

**Section 7.12. Driveways.** All driveways shall be concrete unless otherwise approved by the Committee.

**Section 7.13. Structures.** Only new construction shall be permitted in the Subdivision which shall comply with Section 10.21 of this Declaration. No structure shall be built or placed on the Property without submission to, and approval by, the Committee of the plans in accordance with this Article VII.

**Section 7.14. Time of Construction.** Subject to the time limits stated in Section 7.05, all projects approved by the Committee shall be diligently commenced and completed in compliance with this Declaration and all applicable laws, ordinances and codes. In addition, each Owner acquiring from Declarant any Lot(s) on which a Residence is not located at the time of purchase shall commence construction of a Residence within one year after the date of purchase, unless an extension is granted by the Committee prior to the expiration of that one year period.



**ARTICLE VIII**  
**ARCHITECTURAL CONTROL COMMITTEE**

**Section 8.01. Composition of the Committee.** The Committee shall consist of two (2) or more persons appointed by the Board of Directors of the Association; provided, however, that until Declarant has conveyed all Lots to Owners other than the Declarant, or until ten (10) years after the date of the recording of this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado, whichever occurs earlier, Declarant shall appoint the Committee. The power of the Declarant to "appoint," as provided in this Section, shall include without limitation the power to: initially constitute the membership of the Committee, appoint member(s) to the Committee upon the occurrence of any vacancy, and for whatever reason to remove any member of the Committee, with or without cause, at any time, and to appoint a successor; and each such appointment may be made for such term(s) of office, subject to this Section's power of removal, as may be set from time to time in the discretion of the Declarant. All improvements within the Property constructed by Declarant during the period in which it appoints the Committee shall be deemed approved by the Committee without the issuance of any writing evidencing such approval.

**Section 8.02. No Liability.** None of Declarant, the Association, or the Committee or its members shall be liable in damages to anyone submitting plans or specifications to them for approval, nor to any owner of property affected by these restrictions by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Any Owner submitting, or causing to be submitted, any plans or specifications, agrees and covenants on behalf of himself and his heirs, successors, legal representatives, and assigns that he will not bring any action or suit at law or in equity against the Declarant, the Association, the Committee, or any of the members of those entities to recover any such damages.

**Section 8.03. Notice of Noncompliance or Noncompletion.** Notwithstanding anything to the contrary contained in this Declaration, after the expiration of one (1) year from the date of completion of construction of any improvements within the Property, such improvements shall, relative to purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all the provisions in this Article VIII, unless actual notice of such noncompliance and noncompletion, executed by the Committee or its designated representatives, shall appear of record in the office of the County Recorder of Mesa County, Colorado, or unless legal proceedings shall have been instituted to enforce compliance or completion.

**Section 8.04. Rules and Regulations.** The Committee may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of Article VII.

**Section 8.05. Variances.** Where circumstances (such as topography, location of property lines, location of trees, or other matters) require, the Committee, by the vote or written consent of a majority of its Members, may allow reasonable variances evidenced in writing as to any of the covenants, conditions or restrictions contained in the Declaration under the jurisdiction of the Committee, on such terms and conditions as it shall require. The granting of a variance shall not operate to waive on any other occasion any of the terms and provisions of this Declaration covered by the variance and shall not necessarily serve as a basis for subsequent variances with respect to any other request. The granting of any variance shall not affect in any way the Association's or Owner's obligation to comply with the ordinances of the City of Fruita and other applicable governmental laws or regulations.

**Section 8.06. Appointment and Designation.** The Committee may from time to time, by the vote or written consent of a majority of its members, delegate any of its rights or responsibilities under this Declaration to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the Committee in all matters delegated.

**Section 8.07. Review Fee and Address.** Any plans and specifications shall be submitted in writing for approval together with a reasonable processing fee determined by the Board. The address of the Committee shall be the principal place of business of the Association or such other place as the Committee may from time to time designate in writing to the Board of Directors. The address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the Committee shall be kept.

**Section 8.08. Inspection.** During initial construction, remodeling, repair or other work on a Lot or to a Residence requiring Committee approval, any member or agent of the Committee may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any Lot or

Residence within the Subdivision to determine whether the Residence or Lot's improvement complies with the provisions of this Declaration.

**Section 8.09. General Provisions.** The members of the Committee shall not be entitled to any compensation for services performed under this Article VIII. The powers and duties of the Committee shall cease and terminate on the earlier of termination of this Declaration or a date forty (40) years after the date of the recording of this Declaration. Thereafter, the approval described in Article VIII shall not be required unless, prior to that date, a written instrument is executed and duly recorded by the then record Owners of a majority of the Lots appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by the Committee.

**ARTICLE IX  
ASSOCIATION POWERS**

**Section 9.01. Authority.** The Association shall have all rights, powers, and authority specified or permitted by: (a) CIOA; (b) any other applicable law; (c) this Declaration; and (d) the Articles and By-Laws of the Association, to the extent not inconsistent with (a), (b) or (c).

**Section 9.02. Actions Against Owners.** The Association may take judicial action against any Owner to enforce compliance with any provisions of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance and exercise any other right or remedy for enforcement of this Declaration permitted by law. All of such rights and remedies of the Association shall be cumulative and nonexclusive.

**Section 9.03. Conveyance or Encumbrance.** The Association shall have the right to encumber, dedicate, or convey all or any part of the Common Area or the Association interest in Association Water or any other Association asset. However, no such encumbrance, dedication, or conveyance shall be effective unless an instrument signed by seventy-five percent (75%) of all Owners, including seventy-five percent of all Owners other than Declarant, agreeing to such encumbrance, dedication, or transfer has been recorded in the Mesa County records. In addition, the Association may not convey nor encumber the Association Water nor the Irrigation Facilities without first obtaining written consent of the City of Fruita, which consent shall not be unreasonably withheld. Any of the instruments required by this paragraph may be signed in counterparts which shall together constitute a single agreement.

**Section 9.04. Management Agreement and Other Contracts.**

- (a) The Association may utilize professional management in performing its duties. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years and shall provide for termination by either party to it, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.
- (b) Any contracts, licenses or leases entered into by the Association while the Declarant controls the Association shall provide for termination by either party to it, with or without cause and without payment of a termination fee, at any time after termination of the Declarant's control or the Association, upon thirty (30) days prior written notice.
- (c) Notwithstanding anything to the contrary contained in this Section 9.04, the Association may enter into contracts, licenses and leases in violation of Article 9 of this Declaration upon a waiver of any requirements contained in this Declaration if permitted by the Federal National Mortgage Association.

**Section 9.05. Owner's Negligence.** In the event that the need for maintenance or repair of the Common Area is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the Assessment as a Special Assessment or part of a Regular Assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot. A determination of the negligence or willful act or omission of any Owner or any member of the Owner's family or a guest or invitee or any Owner, and the amount of the Owner's liability therefor, shall be determined by the Associa-

tion at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by such Owner to a court of law.

- (a) No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Area, if any, to all Members, nor shall any Owner place any structure or fence, except those installed by Declarant whatsoever upon such Common Area.
- (b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

**ARTICLE X  
USE RESTRICTIONS**

Section 10.01. Declarant's Use. Notwithstanding any provisions to the contrary in this Declaration, it shall be expressly permissible for Declarant, his successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant to maintain during the period of construction and sale upon such portion of the properties as Declarant deems necessary such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to such construction and sale, including, but without limitation, a business office (which may include a mobile home), storage area, construction yards, signs, model units and sales office.

Section 10.02. Use of Property. In addition to the duties stated elsewhere in this Declaration, each Owner shall have the duty and obligation to perform and comply with the following restrictions to preserve the overall value of the entire Property.

- (a) Only one single family dwelling may be constructed on each Lot. Each single family dwelling may only be occupied by a single family. A "single family" is any number of persons living together as a single dwelling unit who are related by blood, marriage, or adoption, and excludes any group of more than four individuals who are not all related by blood, marriage, or adoption.
- (b) No portion of any Lot shall be used other than for residential purposes, except as expressly permitted by this subsection (b). No commercial activities of any kind shall be carried on in any portion of the Property, except activities relating to the sale or rental of Lots, nor shall any goods, equipment, materials, or supplies used in connection with any trade, service, or business be kept or stored on any such Lot, unless appropriately screened from view in a garage or behind a fence in compliance with Sections 10.19 and 10.10(a). This subsection shall not be construed to prevent or prohibit an Owner from maintaining his professional records or accounts, handling his personal or professional business or professional telephone calls, or occasionally conferring with business or professional associates on his Lot.
- (c) All utilities lines, fixtures and equipment exclusively serving a Lot (excluding, for example, utilities trunk lines) installed within the perimeter of that Lot, shall be maintained and kept in repair by the Owner of the Lot. An Owner shall not impair any easement or allow any condition to exist which will adversely affect the other Lots or their Owners.

Section 10.03. Household Pets. No animals, livestock, reptiles, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance, by excessive noise or otherwise, to any resident(s) of the Property. An Owner's right to keep household pet(s) shall be coupled with the responsibility to pay any costs to the Association for any damages caused by such Owner's pet(s).

Section 10.04. Lots to be Maintained. Except as otherwise provided in this Declaration, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the Residence, improvements constructed on it, and the interior of any fence on the boundary line of a Common Area and a Lot shall be the responsibility of the Owner(s). The Owners shall keep, maintain, and repair their Lots and improvements on their Lots (including, for example, landscaping) in a neat, clean, cultivated, attractive, and well maintained condition, free from the accumulation of

trash or debris. If any Owner fails to keep and maintain that Owner's Lot(s) or improvements in accordance with this provision, the Association may (but shall not have the obligation to) conduct such maintenance, repairs, or restoration and assess its cost as a Special Assessment to the Owner on whose Lot or improvement such maintenance or repairs were conducted.

Section 10.05. Temporary Structures. Time Limits For Construction. Except as expressly permitted by this Declaration, no structure of a temporary character, including but not limited to a house trailer, tent, shack, or outbuilding shall be placed or erected upon any Lot, and no Residence shall be occupied in any manner at any time prior to its being fully completed, nor shall any Residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions set forth in this Declaration; provided, however, that during the actual construction, alteration, repair or remodeling of a Residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work.

Section 10.06. Signs. No sign, graphic, or advertising device shall be placed on the Property except (a) one sign of not more than four square feet advertising a Lot or a Residence for sale, and (b) political signs in support of candidates or ballot issues limited to the ninety day period including and immediately preceding the election date on which the candidates or issues will be voted upon. This provision shall not limit or preclude street, road, or residence identification signs or traffic control signs or devices.

Section 10.07. Antennas. Except to the extent expressly permitted by applicable federal or state law or regulation, no antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot outside of the residence on that Lot, except (a) a satellite dish not more than 24 inches in diameter, completely screened from view by solid fencing complying with the requirements of Section 10.19 of this Declaration, or (b) as otherwise permitted by the Association.

Section 10.08. Yard Ornamentation. All ornamentation in yards, such as figurines, plastic flowers, colored lights, windmills, bird baths or feeders, shall either be screened from public view or approved by the Architectural Control Committee. No clotheslines, dog runs, drying yards, service yards, wood piles or storage areas shall be located on any Lot as to be visible from a street. This Section shall not apply to seasonal holiday decorations which are promptly removed after the holiday or to the display of the flag of the United States of America.

Section 10.09. Vehicular Parking. Storage and Repairs.

- (a) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories to them, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the Property only if such parking or storage is done wholly within the enclosed garage located on a Lot or is otherwise screened by a solid fence six (6) feet in height (even if the vehicle exceeds that height). Section 10.19 pertaining to fencing therefore further limits the location of such fenced vehicle storage area. Any such vehicle may be parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvements located on a Lot or the Common Area.
- (b) Except as provided in this Declaration, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on or within the Property. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which is incapable of being driven under its own propulsion; provided, however, that otherwise permitted vehicles parked by Owners while on vacation, during a period of illness or other hardship, or due to infrequent use of the vehicle, shall not constitute abandoned or inoperable vehicles. If the Association determines that a vehicle is an abandoned or inoperable vehicle, then a written notice describing such vehicle shall be personally delivered to the Owner of the vehicle (if such owner can be reasonably ascertained) or shall

be conspicuously placed upon the vehicle (if its owner cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours after delivery of notice in accordance with this paragraph, or the Association does not receive a reasonable and acceptable reason for the existence of the vehicle in apparent violation of this subsection, the Association may remove the vehicle at the sole expense of its Owner.

- (c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on or within the Property, unless it is done within a 24-hour time period or within a completely enclosed structure which screens the sight and sound of the activity from the street, from adjoining Lots and other property, and the Common Area. The foregoing restrictions shall not be deemed to prevent washing and polishing or any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.
- (d) Each residence shall have a minimum of a two (2) car garage and a maximum of a three (3) car garage.

Section 10.10. Nuisances. No nuisance shall be permitted on or within the Property, nor any use, activity or practice which is the source of annoyance or embarrassment to, or which offends or disturbs any residents of the Property, or which interferes with the peaceful enjoyment or possession and proper use of the Property, or any portion of the Property by its residents. As used in this paragraph, the term "nuisance" shall not include any activities of Declarant or his designees which are reasonably necessary to the development of and construction on the Property; provided, however, that such activities of the Declarant or his designees shall not unreasonably interfere with any Owner's use and enjoyment of his Lot or the Common Area, or with any Owner's ingress and egress to or from his Lot and a public way.

Section 10.11. Lots Not to be Subdivided. No Lot shall be subdivided, except for the purpose of combining all or portions with one or more adjoining Lots, provided that no additional building site is created by such combination of Lots. One Lot, as shown on the Map, shall equal one building site.

Section 10.12. Underground Utility Lines. All electric, television, radio, and telephone line installations shall be placed underground, except that during the construction of any residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of the construction.

Section 10.13. No Hazardous Activities. No activities shall be conducted on the Property or within the improvements constructed on or within the Property which are or might be unreasonably hazardous to any person or property.

Section 10.14. No Annoying Light, Sounds or Odors. No light shall be permitted from any Lot which is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent Lot or property or Common Area. No sound shall be emitted from any Lot which is unreasonably loud or annoying and no odor shall be permitted from any Lot which is noxious or offensive to others. No firearms, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Property.

Section 10.15. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Area, or any Lot, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All containers shall be removed from the street the same day and returned to their screened area. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. All trash receptacles shall be screened from view of the street, neighboring Lots and the Common Area. No elevated tanks of any kind (oil, gas, water, etc.) shall be constructed on any Lot.

Section 10.16. Leases. The term "lease" as used in this Declaration, shall include any agreement for the leasing or rental of a Lot or any portion of it, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his Lot under the following conditions:

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

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

Section 10.17. No Mineral Exploration or Development. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted or undertaken on any portion of the Property nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any portion of the Property. No derrick or other structure designed for exploration for oil or natural gas shall be erected, maintained, or permitted on any portion of the Property.

Section 10.18. Fences. No fencing, privacy walls or hedges exceeding three feet in height shall be constructed or permitted closer to any street than the nearest point of the residence on that Lot to that street. No fence shall exceed six (6) feet in height. All fences shall be approved by the Architectural Control Committee and be constructed of high quality materials consistent with the surrounding architectural styles, colors and building materials. Chain link, cyclone or wire type fencing will not be permitted on the Lot, unless the cyclone fence is not on a property line of the Lot and fully screened from view of adjacent properties and the street.

Section 10.19. Service Area. Storage or accessory buildings (such as dog houses, tool sheds, firewood, garbage, barbeque type buildings or enclosures), nonportable or affixed outdoor furniture such as picnic tables, barbecues, and hot tubs shall be reasonably screened from public and neighboring view. Any storage or accessory buildings must be approved by the ACC prior to being constructed or placed on any Lot.

Section 10.20. Climate Control. Placement of heat pump and condenser units shall provide visual screening and noise attenuation to the neighboring Lots and Common Areas. Use of solar heating systems is acceptable providing that the panels or collectors are integrated into the structure with regard to the overall appearance and design, subject to approval by the Committee. Window mounted and through the wall units are not allowed unless screened from the street, neighboring Lots and the Common Area.

Section 10.21. Manufactured Homes Prohibited: Foundations: Storage Buildings. No home or garage shall be of the type known as "prebuilt, precut, modular, manufactured or mobile homes," regardless of its quality. Each Residence shall be constructed with stem wall foundations. No slab or similar foundations shall be permitted. Any accessory or storage building shall be a maximum of eight (8) feet in height shall be subject to the review and approval of the Architectural Control Committee.

Section 10.22. Landscaping. It shall be the duty and obligation of each Owner (excluding Declarant) to landscape the front and side yards of his or her Lot within one hundred twenty (120) days from issuance of a Certificate of Occupancy and the backyard of his or her Lot within one (1) year from the issuance of a Certificate of Occupancy. The landscaping shall include at least two (2) trees, and five (5) shrubs. The type of trees and shrubs used shall be consistent with those listed in the Fruita Land Use Code, Appendix N, which is attached to this Declaration and made a part by this reference as Exhibit 1. Under no circumstances shall the Architectural Control Committee approve the use of elm, cottonwood, Russian Olive, or willow trees in compliance with this Section. A one time extension of time for an additional one hundred twenty (120) days may be granted to comply with this provision by the Architectural Control Committee in writing.

All Owners are encouraged to landscape each Lot utilizing xeriscape landscaping methods and techniques to minimize water usage for landscaping purposes. Yard areas not covered by lawn or other landscaping will be covered with rock (preferably river rock) or bark mulch.

Mounding of planting beds and lawn areas will be permitted if graded to blend with adjacent property and/or landscaping. Special care shall be taken to insure proper surface drainage to eliminate casual water pockets, so as not to infringe on neighboring property, Lots or Common Area.

Section 10.23. Maintenance of Common Area. To the extent not performed by the applicable governmental entity or Owner, the Association shall be responsible for the landscaping and maintenance of the Common Area, including but not limited to repair of signs, if any, fencing, irrigation equipment, lighting and electrical fixtures and equipment, and plantings. No Owner shall, in whole or in part, change the landscaping, grade or fencing or in any way change the retaining wall on any portion of the Common Area.

Section 10.24. Right to Remedy Violation. If any yard or home is maintained in a condition which violates any of the use restrictions set forth in this Declaration, the Board of Directors of the Association shall have the power to contract with an independent third party to remedy the violation. This right to remedy shall arise after seven (7) days written notice of the nature of the violation is given to the Owner of the offending Lot, and the Owner has failed to remedy the violation within the seven (7) day period. The cost of correcting the violation shall be paid as a Special Assessment and is enforceable by the Association against the Owner of the Lot in violation. This remedy shall be in addition to other remedies provided in this Declaration for enforcement of the provisions of this Declaration.

Section 10.25. Excess Construction Dirt. Dirt that is extracted or produced as a result of the construction of a Residence on a Lot which is not used in the initial construction of the Residence shall be deposited on vacant ground within the Subdivision as determined by Declarant at the Owner's expense.

**ARTICLE XI  
ASSOCIATION WATER**

Section 11.01. Management of Association Water. The Association shall have the exclusive authority to allocate, deliver, manage, and control the use of the Association Water, and shall own, operate, repair, and maintain the Irrigation Facilities. The Association's authority shall include (without limitation) the promulgation of rules, regulations, policies, and procedures, not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand.

Section 11.02. Easements for Ingress and Egress. Each Owner grants to the Association reasonable ingress and egress over, under, and across all easements shown on the Map or any recorded plat of any portion of the Subdivision for the purpose of operating, repairing, or maintaining Irrigation Facilities. No Owner shall construct, erect, or maintain any improvement or structure which shall interfere with the Association's ownership, operation, and maintenance of Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement which shall interfere with the ownership, operation, and maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure. Despite anything to the contrary stated elsewhere in this Article XI, the Irrigation Facilities may be used to provide irrigation water to land added to the Property under Section 14.05; provided that:

- (a) The irrigation water utilized with Irrigation Facilities becomes Association Water when the land is added to the Property, and
- (b) This added use of the Irrigation Facilities does not interfere with delivery of Association Water then being delivered to Lots through the Irrigation Facilities.

Section 11.03. Irrigation Assessments. All billings by Elmwood Lateral Ditch Co., Inc., and Grand Valley Irrigation Company associated with Association Water shall be Common Expenses.

Section 11.04. Flow Restriction: Water Availability. The Association has the right to install and maintain flow restrictor valves on the irrigation pipelines delivering irrigation water to each Lot. Declarant, the Association, and each subsequent Owner understand and agree: that the general area of the Property is desert-like in nature; that Irrigation Water availability varies and that such water is sometimes not available at all for extended periods; and that use of Irrigation Water may be limited by the Association utilizing any reasonable means, including without limitation, water schedules, water use plans and water zones, together with rules and regulations and other limitations on the availability, nature, amount and area of the use of Irrigation Water upon the Lots, Common Area and Property. Subject to regulation by the Association, each owner shall be permitted to use a single 1/2 horsepower pump for irrigation water delivery to a Lot.