

42 PAGE DOCUMENT

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR WOODLAND CREEK ESTATES**

THIS DECLARATION is made and declared this 12<sup>th</sup> day of February, 2008, by  
Woodland Creek, LLC, a Colorado limited liability company, hereinafter referred to as  
"Declarant."

RECITALS

A. Declarant is the owner of certain real property situate in Mesa County, Colorado,  
known and described on the Plat attached hereto as Exhibit A and incorporated herein by this  
reference (hereinafter referred to as the "Property");

B. Declarant desires to develop and improve the Property as a planned community  
pursuant to the Colorado Common Interest Ownership Act ("Act"), sections 38-33.3-101, *et seq.*,  
C.R.S., and subject the same to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby makes the following declaration of covenants,  
conditions and restrictions:

ARTICLE I  
DEFINITIONS

1.1 "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.

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

1.3 "Architectural Control Committee" shall mean and refer to the Architectural Control  
Committee (ACC) referred to in Section 4.6 of this Declaration.

1.4 "Articles" shall mean and refer to the Articles of Incorporation of Woodland Creek  
Estates Homeowners Association, Inc.

1.5 "Association" shall mean and refer to Woodland Creek 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 Woodland Creek Estates  
and enforcing the restrictions set forth in this Declaration.

1.6 "Association Water" shall mean and refer to all water or water rights, ditch or ditch rights appurtenant to the Property or acquired by the Association.

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

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

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

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

1.11 "Declarant" shall mean and refer to **Woodland Creek, LLC**.

1.12 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

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

1.14 "Improvements" shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, irrigation facilities such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Property.

1.15 "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 map attached hereto as Exhibit A.

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

1.17 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot 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.

1.18 "Plat" shall mean and refer to that certain plat of the Property to be recorded in the Mesa County Clerk and Recorder's official records.

1.19 "Property" shall mean and refer to all of the real estate situate within the area described on Exhibit A, known as Woodland Creek Estates.

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

ARTICLE II  
GENERAL DECLARATION

2.1 Intent. By making the Declaration hereunder, Declarant specifically intends 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. Declarant also intends to submit the Property to the provisions of the Act.

2.2 Estate Subject to Declaration. By this Declaration, Declarant expressly intends and does hereby subject the Property to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, 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.

2.3 Owners' Rights to Common Elements. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration and the Articles and Bylaws of the Association. Any Owner may delegate his right of enjoyment to the Common Elements and facilities for the members of his family, tenants, guests, invitees or contract purchasers.

2.4 Easements. The recorded easements and licenses appurtenant to, or included in, the Property, or to which any portion of the Property may become subject by virtue of a reservation herein will be found on the Plat to be recorded in the Mesa County Clerk and Recorder's Records.

2.5 Maximum Number of Lots. Declarant reserves the right to create a maximum of seventy (70) Lots on the Property.

ARTICLE III  
RESTRICTIONS ON USE

3.1 Building Restrictions.

A. Multi-level structures must be approved in writing by the Declarant or the ACC and shall contain no less than a total of one thousand six hundred (1,600) square feet floor area, with a main floor of no less than one thousand one hundred (1,100) square feet, exclusive of open porches, open patios or garages, and shall be subject to approval of the ACC.

B. Single family structures and patio-home structures and attached structures shall contain no less than thirteen hundred (1,300) square feet floor area, exclusive of open porches, open patios and garages, and shall be subject to approval of the ACC.

C. No home or other structure shall have a basement.

D. All homes shall have stucco exteriors. Brick or stone accents may be allowed subject to the approval of the ACC.

E. All homes shall have an eave height of a minimum of nine feet (9') above top of finished first floor height.

F. All concrete foundations should be in compliance with Title 15 of the Fruita Municipal Code and shall meet the criteria of the Mesa County Building Department and any other local municipal governing authority.

G. All roof materials shall be thirty (30) year architectural grade shingles and are subject to the approval of the ACC, provided, however, that the ACC may not require the use of flammable roofing materials as provided by the Act.

H. Earthtone colors approved by the ACC 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.

I. A majority vote of the ACC is required for approval or denial of all proposed improvements.

J. All principal Buildings shall have a two (2) car garage or greater and shall consist of a minimum of four hundred eighty (480) square feet. The third bay of any three-car garage shall be offset at least one (1) foot from the other garage bays.

K. Roof pitch for all residences shall have at least a 3/12 pitch and 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.

L. 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.

M. All roof maintained evaporative coolers shall be located over the rear portion of the dwelling and shall be mounted so the top portion of the cooler is not visible from the street. The ACC may grant a variance where such requirements cannot be met due to technical constraints. Ground mount air conditioning units are allowed, if the location has been approved by the ACC.

N. No metal storage sheds are allowed. Storage sheds shall be the same color as the residence.

O. All gas and electrical meters and utility panels shall be located at least three (3) feet back from the front corners of the principle dwelling building.

P. All down-spouts on structures shall direct water away from neighboring Property toward run-off grades, if possible, as approved by the ACC.

Q. The Property is located in Mesa County, Colorado and within the City of Fruita. All Buildings shall meet or exceed City of Fruita setback standards and requirements. No structure of a temporary character, trailer, teepee, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

R. 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, landscaping, paving, trees, shrubbery or other Improvements without the approval of the ACC.

S. Outbuildings, where permitted, 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.

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

A. The Owners shall keep, maintain and repair their Lots, Buildings and Improvements, including landscaping and vegetation in a neat, clean, cultivated, attractive

and well maintained condition, free from the accumulation of 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 5.4 hereof. The Association or Declarant, upon the failure of the Owner of any Lot, to maintain his/her Lot and Improvements, including the payment of any taxes assessed thereon, in a reasonably satisfactory manner as determined by the Association, or upon use by the Owner in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the Lot and/or Improvements, or abate the improper use, or pay the taxes thereon, and any costs incurred shall be charged against the Owner of said Lot and collected in the manner set forth in Article V 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 Owner to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the complying Owner incurs 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 rubbish. 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. All containers shall be kept within garages or enclosed backyards so as to not be visible from neighboring property, except to make the same available for collection during regular trash collection days, and then only for a period of from 7:00 A.M. through 8:00 P.M. on such trash collection day.

F. No elevated tanks of any kind, including but not exclusively oil, gas, and water tanks, shall be permitted.

G. Driveways shall be surfaced with a hard surface such as concrete.

3.3 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 Fruita 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 residence as a personal office so long as his 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 own vehicle.

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

3.4 Restrictions on Occupants and Pets.

A. At no time shall any single family residence be occupied by more than one (1) family as defined in the Fruita Land Use Code, section 17.03.223.

B. No animals shall be allowed other than domestic pets. Not more than three (3) pets in cumulative total shall be kept on the premises and only then if they are kept solely as household pets for private use and not for commercial purposes. No such animal may be kept which is a nuisance or annoyance to other Owners' properties. Household pets shall be contained on their Owner's property or on a leash and not permitted to run loose. 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. Vicious dogs, vicious breeds of 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. 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. Household pets shall be under the control of their owners at all times.

3.5 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. Recreational vehicles shall be screened by fences, plantings or otherwise kept from public view. Fences approved by the ACC per the guidelines of Section 3.8 shall be deemed to meet this requirement.

C. 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 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.

3.6 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 neat character of the Property, native landscaping is encouraged.

B. 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 six (6) months after the issuance of the certificate of occupancy for the residence, unless an extension is granted by the City of Fruita Community Development Department Director and the Association because of weather conditions or the time of year. 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. All vegetation 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.

C. 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 Declarant or the Association except pursuant to authority granted by state, local or other relevant law.



D. 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.

E. All front yards must have at least two (2) 2½" caliper trees spaced at least twenty (20) feet apart and located at least five (5) feet from the sidewalk. The trees shall be of a species appearing on the Fruita City approved list for street trees, if any.

3.7 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. Unless so permitted, no sign of any kind shall be displayed to the public view on any Lot except one (1) professional sign of not more than four (4) square feet, 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.

3.8 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, 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 must be installed no later than one (1) year after building completion. All fencing design and material must be approved by the ACC. No chain-link fencing is allowed.

3.9 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, or in the original condition at such time the Lot and Improvements thereupon are first conveyed to the Owner by Declarant.

C. No hunting, shooting, trapping or harming of wildlife shall be permitted, it being the intent to conserve and protect all wildlife.

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.

3.10 Declarant Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents and contractors of

improvements, structures or signs necessary or convenient to the development, sale, operation or other disposition of the Lots or Improvements situate within the Property, provided that this exemption shall not be interpreted to impose limitations on the power of the Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

ARTICLE IV  
THE ASSOCIATION

4.1 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; 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.

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

4.3 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.

C. From date of formation of the Association until the termination of Declarant's control, Declarant shall have the right to appoint all members of the Board and all officers of the Association, and remove those members of the Board so appointed as provided below. The period of Declarant's control of the Association shall terminate upon the first to occur of either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant or two (2) years after the last conveyance of a Lot by Declarant in the

ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board must be elected by Owners other than Declarant. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in section 38-33.3-303(9), C.R.S.

4.4 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.

4.5 Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance, to the extent reasonably available, commencing not later than the time of the first conveyance of a Lot to an Owner other than the Declarant:

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. Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board Member. 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 4.5 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 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.

4.6 Architectural Control Committee.

A. 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 structure or Improvement, have been approved by the ACC as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finished grade elevation all to be in conformity with this Declaration, including, but not limited to, the requirements set forth in Section 3.1.

B. The ACC shall consist of three (3) persons to be appointed by the majority 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.

C. No Building or Improvement, including Owners' landscaping, shall be installed, erected or altered within the Property except upon the prior written consent and approval of the ACC.

D. Duplicate copies of plans and specifications 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.

E. 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.

F. The ACC and the members thereof 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.

G. 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.

H. 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 paragraph.

4.7 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 5.2 hereof.

B. The Association shall further be charged with the maintenance, repair and restoration to any Improvement situate 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 5.4 hereof.

4.8 Association Water.

A. All irrigation water to be furnished to the Property shall be furnished by the Association. Water rights running with the Property will be conveyed to the Association by the Declarant. 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. Due to concerns regarding water conservation, the Association shall have the exclusive right to control the irrigation system within the Subdivision. The Association shall own twenty-four (24) shares of Grand Valley Irrigation Company stock. Use of the irrigation system shall be controlled by the Association under rules and regulations adopted by the Association. The irrigation system shall be transferred by Declarant to the Association upon completion of construction, and inspection and approval of the system by the City Engineer. The twenty-four (24) shares of Grand Valley Irrigation Company stock shall be transferred from Declarant to the Association prior to the conveyance of any lot and shall not be encumbered, dedicated nor conveyed in all or in part without the expressed written consent of the City of Fruita, Colorado. The Association shall pay all fees and assessments to the irrigation company when due as necessary to prevent the loss of such water rights. This provision of the Declaration may not be amended or deleted without the expressed written consent of the City of Fruita.

C. The irrigation facilities to be owned by the Association shall consist of an irrigation pump, pump house, a system of pipes and pipelines as to provide irrigation water to

the Common Elements and all Lots. The irrigation facilities, including any easements in connection therewith, shall be solely owned, operated and maintained by the Association.

D. The Declarant shall construct the irrigation facilities described in Section 4.8.B., above and, upon inspection and approval by the proper representative of the City of Fruita, transfer ownership of the same to the Association prior to the sale of any Lot by the Declarant. 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. Owners shall be responsible for operation, maintenance and repair of the sprinkler system installed on their lot.

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

4.9 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.

4.10 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.

#### ARTICLE V ASSESSMENTS

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

the person who is the Owner, or the persons who are jointly and severally the Owner, at the time the assessment was made.

5.2 Regular Assessments.

A. At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the cost and expenses to be incurred by the Association during such fiscal year in performing its functions, and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such fiscal year which is attributable to the operation and maintenance assessments for the prior fiscal year. The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the Common Elements, 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, 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 5.2.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 10<sup>th</sup> day of each January, unless the Board resolves to collect assessments in periodic installment payments.

B. Within ten (10) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than 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.



5.3 Special Assessments. If at any time during the fiscal year the regular assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy, following the procedures outlined in Section 5.2.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.

5.4 Reimbursement Assessment. The Board may levy an assessment against any Owner as a result of such Owner's failure to landscape his Lot, including a sprinkler system, rebuild damaged Improvements or to restore or maintain his Lot or the Improvements situate 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.

5.5 Reserve Fund. The Association may establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through annual payments of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

5.6 Capital Improvements. In addition to regular and special assessments, the Association may levy, in any assessment year, a special assessment for the purposes of defraying in whole or in part the cost of any capital Improvement upon the Common Elements, including fixtures, 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 5.2.B., above.

5.7 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.

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

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

B. Pay the regular assessment pursuant to Section 5.2 hereof in advance by the 10th day of the first month of the fiscal year; or

C. Either or both of the immediately preceding subsections of Section 5.8 hereof.

ARTICLE VI  
CASUALTY, DAMAGE AND REPLACEMENT OF IMPROVEMENTS

6.1 Owner's Insurance. All Owners shall keep and maintain fire and casualty insurance upon all Improvements situate on their Lots to the full insurable value thereof, and shall provide a certificate of insurance with the President of 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.

6.2 Loss, Damage or Destruction of Improvements Other Than Buildings. In the event of a loss, destruction or damage to any Improvements situate 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 situate 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.

6.3 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 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 VII  
SPECIAL DECLARANT'S RIGHTS

7.1 Maintenance of Sales Office and Models. Notwithstanding any other provision of this Declaration, Declarant reserves the right to maintain a sales office and/or model homes in the Subdivision for sales purposes. Declarant shall maintain no more than one (1) sales office and no more than two (2) model homes at any time. The Declarant also reserves the right to remove any sales office or model homes constructed within the Association within one hundred eighty (180) days of ceasing sales activities or the last sale of a Lot in the Association to an owner other than Declarant, its successor or assigns. Each sales office or home shall occupy no more than one (1) Lot, and Declarant reserves the right to use any unsold Lot for such purposes.

7.2 Easements. Easements for installation and maintenance of utilities, drainage facilities and irrigation water are reserved as shown on the Plat. 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 (1) or more utility company is responsible.

7.3 Construction Easement. Declarant expressly reserves the right to perform warranty work and repairs and construction work and to store materials in secure areas, on Lots and Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Owner or mortgagee. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct

underground utility lines, pipes, wires, ducts, conduits and other facilities across the land not designated as reserved for future development in the Declaration or on the map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the Property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an improvement containing Lots. If Declarant grants any such easements, the Declaration will be amended to include reference to the recorded easement.

7.4 Termination of Special Declarant's Rights. The Special Declarant's Rights reserved to Declarant, for itself, its successors and assigns, shall expire ten (10) years from the date of recording this Declaration, unless the Special Declarant's Rights are (i) extended as allowed by law, or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of such rights by Declarant.

7.5 Transfer of Special Declarant's Rights. Any Special Declarant's Right created or reserved under this article for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in every county in which any portion of the project is located. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE VIII  
STREET LIGHTING

8.1 Street Lighting. Woodland Creek Estates is subject to the terms and provisions of an unconditional restrictive covenant which provides in substance that present and subsequent owners of property in the area proposed to be served are subject to and bound by present and future Xcel Energy of Colorado tariffs applicable to street lighting service filed with the Public Utilities Commission of the State of Colorado.

ARTICLE IX  
GENERAL PROVISIONS AND MISCELLANEOUS

9.1 Enforcement. 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. 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.



## CONDUCT OF MEETINGS AND VOTING

Policy: The main means of communication between the Association and its Members is through in person meetings. It is important that meetings are held regularly and that Members have an opportunity to participate, and give feedback.

### Procedures:

Timing. Meetings of the Board and of the Members are to be held at least once per year as outlined in the Association's other governing documents.

Calling a Meeting. Regular meetings of the Board need not be formally called because the Board sets their timing in advance at predictable times. Special meetings of either the Board or the Members, however, need to be scheduled. Special meetings of the Members may be called as specified in the Bylaws. Special meetings of the Board may be called as provided for in the Bylaws.

Notice of Special Meetings of Members. Not less than 10 but no more than 50 days before a special meeting of Members, the Secretary of the Association will provide all Members notice of the special meeting. The notice will be hand delivered or sent by first class mail to each of the Members. Notice of Member meetings will also be physically posted in a conspicuous place in the Association adequate for the posting of such notice. If any Member requests notification by e-mail and provides the Association with their e-mail address, the Association will also deliver notice to them by e-mail. The notice will contain the time, place, and items on the agenda, including the general nature of any proposed amendments to any of the Association's governing documents, or its budget, and any proposition to remove any Officer or Board member.

Notice of Board Meetings. Agendas of meetings of the Board, or any Committee of the Board, will be made reasonably available to the Members or their representatives prior to the meeting date.

Conduct of Meetings. All meetings, whether regular or special, are open to attendance by all the Members or their representatives. This includes meetings of the Board, Committees of the Board, and Members. At an appropriate time determined by the Board, but before the Board votes on an issue under discussion, Members or their designated representatives shall be permitted to speak regarding that issue. The Board may place reasonable time restrictions on comment by attending Members. The Board may also limit the number of people speaking to some reasonable number, but will permit a reasonable number of people to speak on both sides of an issue.

Executive Sessions. The Board, or any committee of the Board, may hold a closed door executive session during any regular or special meeting and restrict attendance to the members of the Board or the Committee and such other persons

as the Board requests if any of the below listed matters require attention. Before holding the session, the chair of the Board or committee holding the session will state the general matter being discussed by identifying the category listed below. No policies, procedures, rules or regulations or other Board action may be adopted in executive session. Any action on any matter discussed in executive session must be entered on the record in the minutes of the meeting at which the executive session took place. No minutes of executive sessions will be made or maintained by the Association.

- i. Matters related to employees of the Association, including a manager or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Association.
- ii. Consultation with legal counsel concerning disputes that are the subject of pending or current legal proceedings or matters that are privileged or confidential between attorney and client.
- iii. Investigation concerning possible or actual criminal misconduct.
- iv. Matters protected from disclosure by constitutional, statutory, or judicial imposition.
- v. Any matter which would constitute an unwarranted invasion of individual privacy if discussed openly.
- vi. Review of or discussion related to any written or oral communication with legal counsel.

Voting and Proxies. Votes in all contested Board member elections, meaning those elections where there are more candidates than positions to be filled, will be made by secret ballot. The ballot will not contain any identifying information concerning the ballot holder. Any other vote concerning the Members, including a vote for an uncontested Board member election, may be made by secret ballot if so directed by the Board, or requested by 20% of the Members who are present at the meeting in person or by proxy. Ballots for any vote are to be prepared by the Secretary of the Association, or the Secretary's designee, prior to or during the meeting.

- i. Individual members will present evidence of their membership to the Secretary, or to another person identified by the Board in advance of the meeting where a vote is to be held. That person will verify membership, and then issue the individual a ballot, checking their name off, or otherwise indicating, that the vote for that Lot has been cast. Each Member is only entitled to vote their number of allocated votes permitted by the Association's governing documents.

- ii. Proxies are permitted as provided by the Bylaws. In the event that a Member holds a proxy from another Member, the proxy holder, upon presentation of the proxy to the Secretary, or another person identified by the Board for the purpose, shall receive a ballot to cast the vote of the Member providing the proxy in the same manner as provided above for the proxy holder's own vote. The proxy shall be kept by the Association for its records.
- iii. If a Lot is owned by more than one (1) person, each owner of the Lot may register protest to the vote cast by another owner of such Lot through a duly executed proxy.
- iv. The Association may, acting through its authorized agents, reject the vote, consent, ballot, waiver, proxy appointment, or proxy revocation if such agent, in good faith, has a reasonable basis to doubt the validity of the signature on any relevant document or the signor's authority to sign for any Lot. Any such decision shall be valid unless a court of competent jurisdiction determines otherwise.
- v. Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be owners and shall be selected or appointed by the Board at an open meeting in a fair manner. The results of a vote by secret ballot shall be reported without reference to the names, addresses or other identifying information of owners participating in the vote..

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary



**ADOPTION, AMENDMENT, REPEAL, OR OTHER CHANGES TO THE  
POLICIES, PROCEDURES, RULES AND REGULATIONS**

Policy: Our community continues to change as residents move in and move out. We want our governing documents, including these policies, procedures, rules and regulations to remain up to date, legally enforceable, and reflective of our community's desires.

Procedure:

Step 1: Proposal. If the Board of Directors should decide that it would be in the best interest of the Association to adopt, amend, repeal, or otherwise change the policies and procedures, such a proposal is to be presented in a regular or special meeting of either the Board or the Members. If adoption, amendment, repeal, or other change is proposed by the Board of Directors, it should appear on the agenda of the meeting at which the matter is to be proposed. If the Members propose any change to these policies and procedures, the matter need not appear on the agenda of any meeting before the matter is proposed.

Step 2: Committee Review. Once the Board or the Members have proposed adoption or amendment of the Association's policies and procedures pursuant to step 1, the Board will appoint a committee to consider the proposed change. The committee will consist of at least 3, but no more than 5, individuals and will include at least 1 member of the Board. The committee will then prepare a written draft of the proposed change to the policies and procedures for presentation to the Board at their next meeting, or at some other time determined by the Board. The committee is empowered to determine what it believes to be the best means of producing the draft. They may wish to survey or interview the Members, or some group thereof, or seek legal counsel. The committee is to make a good faith effort to communicate with both sides of a disputed issue. If the committee determines to use some method which costs money, they must formally seek approval for the expenditure from the Board.

Step 3: Board Review. At the next meeting of the Board, or at some other time the Board should set in step 2, the committee's written proposal is presented to the Board. The Board will then open the matter for discussion as provided for in these policies and procedures. After comment on the proposed adoption, amendment, repeal, or other change has been taken, the Board will vote on whether the change should be adopted.

Step 4: Adoption of Policies and Procedures. Adoption, amendment, repeal, or other change to these policies and procedures will be made by a simple majority vote (51%) of the Board of Directors at a regular or special meeting of the Board called for that purpose.

Step 5: Publication. If the proposed change is adopted in step 4, the Secretary of the Association will cause the change to be made to the policies and procedures. Copies of the document reflecting the changes will then be circulated to the members as provided for in the policies and procedures.

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary

## COLLECTION OF PAST DUE ASSESSMENTS

Policy: It is vital to the effective administration of the Association that assessments and other charges to be paid by Members be paid in a timely manner. The Association must collect past due assessments in order to continue to serve the community well and efficiently. To perform these duties the Board needs to remain flexible in its approach in order to account for the unique facts and circumstances surrounding each delinquent payment.

Procedure:

"Past Due" Assessments. Assessments are "past due" if they are not paid by their due date, as provided in the Declarations or by the decision of the Board.

Collecting Past Due Assessments. The Association, through the Board of Directors, may initiate collection proceedings of any kind at any time after any assessment payment becomes past due. The following provisions lay out the structure of the Association's collection procedures used in most circumstances. However, the Board, in its sole discretion in light of the relevant facts and circumstances may choose to employ any one or more of the following means in seeking collection, with or without notice, at any time after a payment is past due.

- i. 30 days past due (and thereafter): Fees. A late fee of \$25.00 will be charged against all past due assessments on a monthly basis. The fee will become due and owing 30 days after the assessment became due and owing. A further late fee will be charged for each month thereafter that the assessment remains unpaid. These fees shall be added to the total delinquent amount and shall become a charge upon the land as provided in the Declaration.
- ii. 60 days past due: Acceleration. If any assessment payment is more than 60 days past due, all of the assessment payments due during the remainder of the current assessment year will become immediately due and owing. The entire amount so accelerated will be a charge upon the land of the delinquent Owner, as provided in the Declaration.
- iii. 90 days past due: Collection Agencies/Lawyers. Once an assessment has become 90 days past due, the Association will refer the past due assessments to a collection agency or a lawyer for collection. The delinquent Owner will be liable for any fees or other expenses associated with referring the matter to collections. Such expenses will be added to all delinquent amounts and will become a charge upon the land, as provided in the Declaration.

- iv. 120 days past due: Lien. All assessments are a charge upon the land. This means that the Association has and may assert its interest in the property of a delinquent Owner. This interest is called a "lien." Once an assessment has become 120 days past due, the Association will give formal legal notice of its lien against the delinquent Owner's property. Any costs or expenses associated with this process, including attorneys' fees, shall be added to the total delinquent amount and shall become a charge upon the land as provided in the Declaration.
- v. 150 days past due: Foreclosure. As a last resort, the Association will foreclose its lien upon the property of a delinquent Owner to satisfy the past due assessments, fees, costs, and other expenses charged against the land. Once a payment has become more than 150 days past due, the Association will begin foreclosure proceedings. The costs and expenses of so doing, including attorneys' fees, shall be charged against the proceeds of any foreclosure sale, along with the delinquent assessments, costs, fees, and other expenses as provided by the Declaration and the Colorado Common Interest Ownership Act (CCIOA).

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary

## COVENANT AND RULE ENFORCEMENT

Policy: The Declarations are in place for the betterment of our community. To be effective, they must be obeyed by all the Members of the Association and their guests, tenants, or invitees. It is one of the Association's purposes to see to it that the provisions of the Declaration and any Policies, Procedures, Rules and Regulations are followed by everyone in the Association.

### Procedure:

Violations. Engaging in any activity prohibited by the Declaration or the Policies, Procedures, Rules and Regulations of the Association constitutes a violation. Every Member has the authority to request that another Member, or Member's guests, cease or correct any act or omission which appears to be a violation. Accordingly, Members are encouraged to self-govern and resolve problems between them in a neighborly fashion by making an informal request that the alleged violation cease. The Association, acting through the Board may also take such informal action to seek a resolution.

Written Report. If violations cannot be resolved through informal requests, violations may be reported to the Board of Directors by any Member in writing, or using a form approved by the Board. Submitting a written report of violation will initiate formal action by the Association. The written report must state with as much specificity with regard to time, date, place, persons involved and circumstances as possible, what acts or omissions constituting a violation the complaining Member believes have occurred. Any written reports of violation will be submitted to the Board by mail or hand delivery.

Review. Once a violation has been reported to or noted by the Board, the Board will review the matter. It is the responsibility of each Board member to make a determination as to whether he or she is able to function in a disinterested fashion when reviewing alleged violations and making decisions about how to secure compliance. If any member of the Board is unable to give any matter objective consideration, he or she will disclose that fact to the Board, remove him or herself from the proceedings, and have their removal noted in the minutes of the Board meeting.

Step 1: Initial Review. The Board will review the written report and determine whether it has stated sufficient facts to indicate a violation has occurred.

Step 2: Compliance Letter. Should the Board determine that a violation has or may have occurred, the Board will send a compliance letter detailing the basis of the violation, with appropriate citations to the Declarations, Policies, Procedures, Rules and Regulations, to the Member against whom a complaint has been made. The letter will require that the alleged violation cease within such period of time as the Board believes is reasonable, based on the nature of

the alleged violation. The letter will be mailed to the last known address of the allegedly violating Member by certified or regular mail.

Step 3: Notice of Hearing. Should the alleged violation continue past the date set by the compliance letter, then a second letter will be sent to the allegedly violating Member giving that Member notice of the time, date and place when the Board will meet to hear the matter. The allegedly violating Member will have an opportunity to attend and be heard at the meeting. After determining that a violation has occurred, the Board has the authority, to levy fines, approve referral of the matter to a lawyer, or take any other action authorized by the Declarations, Policies, Procedures, Rules and Regulations or by Colorado law necessary to secure compliance.

Hearing Details. The hearing provided for in Step 3 will not be conducted according to any technical rules relating to evidence or witnesses. Generally, any relevant information may be admitted if it is the sort of information on which reasonable persons would rely in the conduct of serious personal matters, regardless of any common law or statutory rule which make certain evidence improper in civil actions. The hearing will continue even if the complaining Member, the allegedly violating Member, or both, fails to attend. Decisions of the Board need not be made or reported immediately and may be made at any time not in excess of 7 days after the conclusion of a hearing. All decisions of the Board are effective 3 days after written notification of the decision is sent to the violating Member by certified or regular mail.

Sanctions. Sanctions for violations may include any or all of the following without limitation. Any fines or monetary sanctions will be collectable as Assessments.

- i. Fines – First offenses, \$25; Second offenses, \$50; Third and subsequent offenses, \$75 and up.
- ii. Termination of Member voting rights until the violation is cured.
- iii. Levying an assessment to repair or remedy any damage, physical, aesthetic, or otherwise, caused by the violation.
- iv. Seeking a remedy at law or in equity including but not limited to an injunction prohibiting further violations, money damages, costs, and attorneys' fees expended as provided for by the Declarations and the Colorado Common Interest Ownership Act (CCIOA).

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary

## RESERVE FUND INVESTMENT

Policy: Over time, all the things we use as a community wear out. Those of us who are using our common elements now may not be around when they need to be replaced in the future. We plan to maintain a reserve fund to be used to pay for the replacement and repair of the common elements.

Procedure:

Reserve funds are to be invested in an interest bearing checking or savings account or a money market account only, with provision for adequate cash reserves, if necessary. The officers and members of the Board of Directors shall make investment decisions in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director or officer reasonably believes to be in the best interests of the Association in accordance with the Colorado Revised Nonprofit Corporation Act.

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary

## DISPUTE RESOLUTION

Policy: It is the general policy of the Association to encourage the use of Alternative Dispute Resolution to resolve disputes between the Association and its Members when such disputes cannot be resolved through the ordinary course of business and communication.

Procedure:

Claims. All "claims" will be subject to and resolved in accordance with the terms of this policy. "Claims" includes all claims, disputes, and other controversies between a Member or Members and the Association arising out of or relating to:

- (1) interpretation, application or enforcement of the Declaration or policies, procedures, rules or regulations of the Association;
- (2) design or construction of improvements within the Association, or alleged defects in any such design or construction; or
- (3) rights, obligations and duties arising under the Declaration, the policies, procedures, rules or regulations of the Association or applicable Colorado law, or the breach of the same, of or by the Association, the Association's Board or Directors or any member thereof, or any Member.

Claims Subject to Agreement. Unless at least 67% of the Members in the Association agree otherwise, the following shall not be "Claims" subject to this policy:

- (1) any suit by the Association against a Member to collect assessments;
- (2) any suit by the Association to obtain a temporary restraining order or injunction and such other equitable relief as the court may deem necessary for the Association to enforce the provisions of the Declaration, the policies, procedures, rules or regulations of the Association;
- (3) any suit between or among Members, which does not include the Association as a party; and
- (4) any suit in which there is an indispensable party who is neither a Member nor the Association.

Notice of Claim. All Claims must be initiated by the party having a Claim (the claimant) within a reasonable time after the Claim has arisen, and in no event may a Claim be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. When the Association or any Member has a Claim, as defined above,



the claimant will submit all of their Claims in writing to the other party (the respondent), stating plainly and concisely:

- (1) the nature of the Claim, including persons involved and the respondent's role in the Claim;
- (2) the legal basis or other specific authority out of which the Claim arises; and
- (3) the specific relief or proposed remedy sought.

Negotiation. Commencing after the respondent receives the notice of Claim, the parties will attempt in good faith to negotiate a resolution of the claim for thirty (30) days, or for such longer period as the parties may agree.

Mediation. If the parties are not successful in resolving the Claim through negotiation, the claimant will submit the claim to mediation within thirty (30) days from the end of the negotiation period. Mediation will be completed using a trained independent mediator familiar with the governance of common interest communities acceptable to both parties. In the event that the parties cannot agree on a mediator, each party will select a qualified mediator. The mediators so selected will select a third mediator by mutual agreement, which mediator will conduct the mediation. If the claimant does not submit their Claim to mediation within the time provided, does not appear for the mediation, or, in the event that the parties do not agree to a mediator, fails to select a mediator as provided above, the claimant will be deemed to have waived the Claim, and the respondent will be released and discharged from any and all liability on the Claim.

Costs. The costs of mediation will be split equally between the parties, with each party bearing the cost of their own attorneys' fees, if any. In the event that a Member fails to pay their share of the cost, the unpaid amount will be considered an assessment against that Member's Lot, and may be collected as provided by the Declaration, the policies, procedures, rules and regulations of the Association, and applicable Colorado law.

Mediation Agreement. Any settlement or resolution of the Claim through mediation will be documented in writing by the mediator and signed by the parties (the Mediation Agreement). If any party fails to abide by the terms of the Mediation Agreement, then any party affected by the breach may file suit or initiate other proceedings to enforce the Mediation Agreement without the need to again comply with this policy. Any suit to enforce the terms of the Mediation Agreement must be brought in the state or federal courts of the State of Colorado, with venue in Mesa County, Colorado. The Mediation Agreement may be presented to the Court as a stipulation of the parties either before or after the breach of its terms. In the event of a suit to enforce the Mediation Agreement, the party taking action to enforce the Mediation Agreement shall be entitled to

recover from the non-complying party all costs incurred in enforcing the Mediation Agreement, including, but not limited to, attorneys' fees and court costs.

Mediation Certificate. If the parties do not settle the Claim within thirty (30) days of submission of the Claim to mediation, or within such other time as determined by the mediator or agreed to by the parties, the mediator will issue a certificate, signed by the mediator (the Mediation Certificate). The Mediation Certificate will state that the parties have attempted to mediate a resolution of the Claim, that the parties are at an impasse, the date on which mediation was terminated, and any other matter the mediator deems appropriate.

Litigation. Either party may commence a judicial or administrative proceeding regarding the Claim after issuance of the Mediation Certificate. If the parties have not obtained a Mediation Certificate, as provided in this policy, that will serve as a bar to commencing judicial or administrative proceedings and any such proceedings may be stayed by the opposing party pending compliance with this policy.

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary

## DISCLOSING AND ADDRESSING BOARD MEMBER CONFLICTS OF INTEREST

Policy: The Association should not be a vehicle for benefiting one group of people over another simply because they have some special connection with someone on our Board of Directors. Board Members should therefore disclose any relationship they have to any person or transaction that creates a conflict of interest between their duties as a Board Member and their interests as an individual.

Definitions: As used in this policy the following terms have the following meanings:

“Conflicting Interest Transaction” means a contract, transaction, or other financial relationship between the Association and a Director, or between the Association and a party related to a Director, or between the Association and an entity in which a Director is a director or officer or has a financial interest.

“Director” means a member of the Association’s Board of Directors.

“Party related to a Director” means a spouse, a descendant, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the Director or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a director or officer or has a financial interest.

Procedure:

Defining Conflict of Interest. When the Board is considering any contract, decision, or other action that would constitute a Conflicting Interest Transaction, a conflict of interest arises.

Disclosing a Conflict. If a Director finds that he or she has some relationship that presents a Conflicting Interest Transaction, the Director must disclose that conflict to the Board in an open meeting prior to any discussion of the issue.

Effect of Conflict. After a Director has disclosed the existence of a conflict, they may still participate in deliberations of the Board, but may not vote on the matter.

No Loans. No loans shall be made by the Association to its Directors or officers. Any Director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of the loan until it is repaid.

Transactions not Voidable. No Conflicting Interest Transaction shall be voidable by an Owner or on behalf of the Association if:

(1) The facts about the conflicting interest transaction are disclosed to the Board, and the majority of the disinterested Directors, even if less than a quorum, in good faith approved the Conflicting Interest Transaction; or

(2) The facts about the Conflicting Interest Transaction are disclosed to the Owners entitled to vote on the matter, and the Conflicting Interest Transaction is authorized in good faith by a vote of the Owners entitled to vote on the matter; or

(3) The Conflicting Interest Transaction is fair to the Association.

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary

- (5) Any improper purpose as determined in the sole discretion of the Board of Directors of the Association.

Charges for Copying. When a Member inspects the Association's records as provided for above, the Member may make copies of the records if they so desire. The Association may charge a reasonable fee, not to exceed the actual cost per page (which includes the expenses associated with the use of the copy machine, paper, toner/ink, labor employed in making the copies, and any other actual costs of copying), for copies. This fee may be collected in advance.

Time Periods for Retention. The Association will retain the above described records for the period of time described below:

- i. Governing Documents. The Association will permanently maintain copies of its Articles of Incorporation and any Articles of Amendment to the same, the Declarations and any amendments to the same, the Bylaws and any amendments, and the Policies, Procedures, Rules, and Regulations as most recently amended.
- ii. Member Information. A list of the Association's Members, including their mailing addresses and e-mail addresses, if provided, as well as a list of the Association's Board of Directors and Officers, including their home or business address will be maintained for a period of seven (7) years, to be updated annually.
- iii. Minutes. Minutes of any meeting of the Board of Directors, the Members of the Association, or any Committee of the Board, or records of any action by consent in lieu of a meeting of the Board, the Members, or a Committee of the Board, except records of any executive session of the Board or a committee of the Board, will be maintained permanently.
- iv. Accounting Records. A general ledger of accounting entries, along with a record of cash receipts and disbursements, and any financial reports, audits or reviews will be maintained permanently. Accounts receivable and accounts payable, member invoices, vendor's invoices, petty cash receipts, expense reports, canceled checks, bank statements, and deposit slips will be maintained for seven (7) years.
- v. Insurance Information. All insurance policies, reports, records of claims, accident reports, coverage information and any other insurance document, whether the policy is currently in force or not, will be kept for seven (7) years from the date the policy expired, the date of any accident, or the date of the settlement of any claim.

- vi. Contracts. The Association will maintain records of its contracts, including any leases, service contracts, contracts for the purchase of goods, warranties, or any other contract or agreement for a period of seven (7) years following the termination of any contract or the expiration of any agreement.
- vii. Property Records. Records or certificates of title related to any inventory, equipment, or other personal property owned by the Association along with records of any real property owned by the Association, including appraisals, blueprints, surveys, deeds, permits and other documents will be maintained for seven (7) years after the date the Association disposes of the real or personal property.

Adopted on \_\_\_\_\_

\_\_\_\_\_  
Secretary

## INSPECTION AND COPYING OF ASSOCIATION RECORDS

Policy: The Association will maintain records of its activities and make those records available to Members.

Procedure:

Records Maintained. The Association will maintain the following records in written form, or in some other form capable of being made into a written form within a reasonable time:

- i. The Association's vital information including its name, the name and address of the Association's designated agent, if any, a valid physical address for both the Association and its designated agent or management company, if any, and the initial recording date and Book/Page location of the Declarations.
- ii. Other general information including: the date of the beginning of the Association's fiscal year, the operating budget for the current fiscal year, a list, by unit type, of the Association's current assessments, the Association's annual financial statements for the preceding fiscal year including any amounts held in reserve.
- iii. Accounting records, using generally accepted accounting principles (GAAP), cash, cash accrual, or any other method required or permitted by law.
- iv. Financial records sufficiently detailed to permit the Association to produce statements of delinquent assessments, and any statements of delinquent assessments that are produced.
- v. Minutes of all meetings of the Members, and records of all actions taken without a meeting, except executive sessions of the Board or a committee of the Board [the Board of Directors, or any Committee of the Board], including records of any waiver of notice for any such meeting. Records of meetings will be kept for three (3) years.
- vi. A record of Unit Owners sufficient to allow the Association to produce a list showing the names, addresses, and votes allocated to each Owner.
- vii. Records of the Association's governing documents. This includes the Articles of Incorporation and any Articles of Amendment to the same, the Declarations and any amendments to the same, the Bylaws and any amendments, and these Policies, Procedures, Rules, and Regulations as most recently amended.

- viii. Any resolution of the Board which impacts the rights and obligations of the Members.
- ix. All written communications to the Members, in their role as Members, during the preceding three (3) years.
- x. A list of the names, and business or home addresses, of the current Board of Directors and any Officers of the Association.
- xi. The most recent annual report, if any.
- xii. A copy of all financial reviews or audits of the Association's financial records.
- xiii. A list of all Association insurance policies including company names, policy limits, policy deductibles, additional named insureds, and expiration dates.

Records Made Available. The foregoing records will be available to the Members during normal business hours within five (5) business days of a Member's request or at the next regularly scheduled Owner or Board meeting, if the next such meeting is scheduled within thirty (30) days of the Member's request, in the sole discretion of the Board of Directors. The Board shall advise the Owner of the time and place of such inspection in writing within five (5) business days of the Owner's request. Provided however, that Members must request the records in good faith and for a proper purpose related to their role as Members of the Association. The request must further state, with reasonable particularity, the records sought and the purpose of the request. The Board may review the Member's motives and make a determination as to whether or not the request to inspect the Association's records meets these requirements. Under no circumstances will the Board unduly limit access to Association records; however, minutes and other records of executive sessions of the Board will not be kept, and if any are kept, they will not be subject to inspection or copying by Members.

Improper purposes. Association records, including membership lists, shall not be used by a Member for:

- (1) Any purpose unrelated to a Member's interest as an Owner;
- (2) The purpose of soliciting money or property unless such money or property will be used solely to solicit the votes of the Members in an election to be held by the Association;
- (3) Any commercial purpose;
- (4) For the purpose of giving, selling, or distributing such Association records to any person; or