

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VISTA MESA SUBDIVISION

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VISTA MESA SUBDIVISION (this "Declaration"), is made on the date shown below, by Vista Mesa, LLC, a Colorado limited liability company ("Declarant").

RECITALS

Declarant is the owner of certain real property in Mesa County, Colorado, as more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"). This Declaration shall further define the character, duration, rights, obligations and limitations of ownership of the Property.

ARTICLE 1. DEFINITIONS

1.1 "ACC" means the Architectural Control Committee provided for in Article 4 of this Declaration.

1.2 "Act" means the Colorado Common Interest Ownership Act, presently codified at C.R.S. § 38-33.3-101, *et seq.*, as it may be amended, supplemented, repealed and re-enacted, or otherwise modified in the future.

1.3 "Allocated Interests" means the common expense liability and votes in the Association allocated to each Lot. The formulas for the Allocated Interests are as follows:

1.3.1. *Percentage share of Common Expenses.* The Owner of each Lot shall be responsible for a percentage of the Common Expenses equal to a fraction, the numerator of which is one, and the denominator of which is forty (40), the total number of Lots in the Subdivision.

1.3.2. *Voting.* Each Lot shall have one (1) vote.

1.4 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

1.5 "Association" shall mean the Vista Mesa Subdivision Homeowners Association, Inc., a Colorado nonprofit corporation, formed or to be formed, its successors, and assigns.

1.6 "Association Documents" shall mean the Articles, Bylaws, Policies, Procedures, Rules and Regulations of the Association, as each of them may be amended, modified, supplemented, or otherwise changed from time to time.

1.7 "Association Water System" shall mean and refer to the water and water rights, ditch and ditch rights associated with the allocation of water to the Property by and through the Grand Valley Irrigation Company (GVIC) for the irrigation use of the Association, and any other water or water rights, ditch or ditch rights, or easements acquired by the Association together with all facilities, improvements, easements, or other real or personal property related to, associated with, or used in connection with any of them (including, for example, irrigation pumps, valves, filters, siphons and pipeline).

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

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

1.10 "Clerk" means the Clerk and Recorder of Mesa County, Colorado.

1.11 "Common Elements" means all portions of the Property in which the Association owns an interest for the common use and enjoyment of the Owners and specifically includes the Association Water System, Outlots B, C, D, E, F, G, and H shown on the plat of the Community, together with stormwater and other drain pipes and drainage facilities.

1.12 "Common Expenses" means: (i) all expenses expressly declared to be common expenses by this Declaration; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements; (iii) insurance premiums; (iv) a reasonable and adequate contingency or surplus fund for insurance deductibles and general routine maintenance, repairs and replacement of Improvements within the Common Elements on a periodic basis, as needed; (v) all expenses lawfully determined to be common expenses by the Board; and (vi) other costs which the Act permits to be added to an assessment including, but not limited to, costs of collection, fines, fees, interest, and attorneys' fees.

1.13 "Community" shall mean and refer to the common interest community described herein and created on the Property by this Declaration and related Plat, known as Vista Mesa Subdivision, which is a planned community as defined by the Act.

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

1.15 "Design Guidelines" means the rules, regulations, procedures, standards, guidelines and requirements promulgated by Declarant or the ACC, and all amendments thereto, governing the review and approval or disapproval of proposed Improvements within the Property, and such other matters as the ACC considers necessary or appropriate.

1.16 "Director" shall mean and refer to a member of the Board elected as provided in the Bylaws.

1.17 "Improvements" shall mean and refer to any and all structures and all associated facilities of any kind, including exterior architectural elements, fixtures, utility services, outlets, and related facilities, awnings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, and other facilities, such as pumps, pipes and sprinklers and other structures of every type and kind situated on the Property.

1.18 "Lot" shall mean the plots of land subject to this Declaration and designated as a "Lot" on any subdivision plat or drawing of the Property recorded by Declarant with the Clerk, together with all appurtenances and improvements now or in the future on the Lot, including a Residence.

1.19 "Member" shall mean and refer to a person or entity that is a member of the Association, as defined in Article 4 of this Declaration.

1.20 "Owner" means any person, corporation, partnership, association, contract seller or other legal entity or any combination thereof, including Declarant, that owns the record fee simple interest in one (1) or more Lots, but excluding those having such interest merely as security for the performance of an obligation.

1.21 "Period of Declarant Control" shall mean that period during which the Declarant, or a person designated by Declarant, may appoint and remove the officers and members of the Board as set forth in Article 4 below.

1.22 "Plat" means that certain map of the Community recorded or to be recorded in the records of the Clerk, which includes, among other things, a description of the boundaries of each Lot and each Lot's identifying number, which is incorporated by reference and thereby made a part of this Declaration.

1.23 "Policies, Procedures, Rules and Regulations" means all written policies, terms and conditions that are adopted by the Association for the management, regulation, use, operation or any other aspect of all or any part of the Property, including any amendments thereto.

1.24 "Property" shall mean and refer to that certain real property described on Exhibit A attached hereto, together with all appurtenances thereto and all Improvements now or hereafter thereon, which shall be known as "Vista Mesa Subdivision."

1.25 "Residence" shall mean a single-family dwelling constructed on a Lot.

1.26 "Security Interest" shall mean an interest in real estate or personal property constituting, attached to, or located on the Property, or any portion thereof, including any Lot, created by contract or conveyance that secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for

deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.27 "Security Interest Holder" means any person named as a secured party, security interest holder or beneficiary, or in a similar capacity, under any Security Interest.

ARTICLE 2. GENERAL DECLARATION

2.1 Intent. By making this Declaration, 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 the Improvements in a manner beneficial to all Owners. By this Declaration, Declarant expressly intends and does hereby subject the Property to the provisions of this Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges that 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.

2.2 Other Limitations. This Declaration, together with the maps and plats that show or depict the Property, or parts thereof, do not necessarily contain, reflect or reference all of the rights, burdens, encumbrances, easements or other interests, appurtenant or personal, that may be attached to the Property, including the Lots or parts of the Lots. Such rights, burdens, encumbrances, easements and other interests as may affect in one manner or another the Owners' interests in the Lots may arise under other instruments or documents appearing in the records of the Mesa County Clerk and Recorder, in law, or in equity, and may not yet be fully defined, adjudicated or resolved. Owners and potential Owners of Lots are cautioned to diligently review available documents and engage appropriate legal or other counsel of their choosing to fully investigate, evaluate, and understand the rights, burdens, encumbrances, easements and other interests as may affect their Lot either before purchasing or afterwards.

2.3 Owners' Estates and Rights to Common Elements. The Property is divided into Lots. Owners of Lots shall have a nonexclusive right and easement of enjoyment in and to the Common Elements, plus a right and easement of ingress and egress over, across and upon the Common Elements, for the purpose of access, ingress and egress to and from his Lot and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to every Lot, within the restrictions imposed by this Declaration and the Association Documents, without hindering or encroaching upon the lawful rights of the other Owners. Any Owner may delegate his right of enjoyment to the Common Elements and facilities for the members of his family, his tenants, or contract purchasers who reside on the Property. Each Owner of a Lot shall be entitled to the exclusive ownership and

possession thereof. Title to a Lot may be held or owned by any person in any manner in which title to other real property may be held or owned in the State of Colorado, including, without limitation, joint tenancy or tenancy in common.

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

2.4.1. The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration.

2.4.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure.

2.4.3. The right of the Association to promulgate, amend, repeal, re-enact and publish Policies, Procedures, Rules and Regulations with which each Member shall strictly comply, and the Association may establish penalties, including the imposition of fines, for the infraction of such rules and regulations.

2.4.4. The right of the Association to regulate and restrict vehicular parking, storage and repairs.

2.4.5. The right of the Association to suspend the voting rights of a Member for any period during which any assessment against the Member's Lot or any other amount due from such Member to the Association remains unpaid and for a period not to exceed sixty (60) days for any other infraction of the Association Documents.

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

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

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

2.5 Maximum Number of Lots. Declarant has the right to create forty (40) Lots in the Community.

2.6 No Partition. The Common Elements shall be owned by the Association and shall remain undivided. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute 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 pled as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association and the complying Owners to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association and complying Owners incur in connection therewith.

ARTICLE 3. RESTRICTIONS ON USE

3.1 Building Restrictions.

3.1.1. *Residences.* One (1) Residence along with one (1) accessory structure, as permitted by Mesa County, shall be constructed on each Lot, consistent with the Design Guidelines promulgated by the ACC, and the following restrictions:

(a) Every Residence shall have a fully enclosed, private garage for no less than one (1) vehicle connected to the streets within the Community by a driveway with a concrete surface at least twelve feet (12') wide.

(b) The ACC shall have final approval of all Improvements to be constructed on any Lot, including, without limitation, the design of any Residence and the exterior building materials and appearance of any Residence.

3.1.2. *Landscaping and Irrigation.* No landscaping shall be performed on a Lot without the prior written approval by the ACC of a landscaping and irrigation plan for such Lot, and all landscaping and irrigation shall comply with the Design Guidelines. A landscaping and irrigation plan for each Lot must be approved by the ACC before construction is commenced on the Residence on the Lot. Any substantial change in the type or location of approved landscaping vegetation shall require the further approval of the ACC.

3.1.3. *Structures.* All Improvements constructed within or placed upon the Property shall be of new construction, and no buildings or structures shall be moved from

other locations onto the Property. No temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot, and no Residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any Residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently through completion.

3.1.4. *Colors.* Those portions of any Residence visible to an observer on any street within the Community or any Lot shall be in earth tone colors ranging from light sand to dark brown, light green to dark green or natural wood or stone as approved by the ACC; provided, however, that Owners may paint or color the main front entry door any color they may choose.

3.2 Maintenance Obligations.

3.2.1. *Maintenance of Lots.* Each Owner, at its sole expense, shall keep and maintain its Lot and Improvements thereon, in good repair, and in a clean, safe, and attractive manner, free from the accumulation of trash or debris or visual deterioration. Each Owner shall diligently maintain, trim, weed, cultivate, protect, preserve and otherwise keep in a healthy and attractive condition the shrubs, trees, hedges, grass, planters, gardens and other landscaping upon the Owner's Lot, including, without limitation, the removal of noxious weeds and invasive plants, dead or diseased vegetation and the removal or elimination of material constituting or creating a fire hazard or nuisance. If any Owner fails or refuses to perform maintenance required by this subsection, the Association may cause such work to be performed and assess such Owner for the costs thereof pursuant to Article 5 of this Declaration.

3.2.2. *Maintenance of Common Elements.* The Association shall keep and maintain the Common Elements in a neat, clean, cultivated, attractive and well maintained condition, in proper working order, and free from the accumulation of trash or debris or visual deterioration. The Owners shall promptly report to the Association, or its designated agent, any defect or need for repairs or maintenance for which the Association is responsible. The Owners shall not make any alterations in the portions of the Property to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Improvements without first obtaining the written consent of 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 common expense assessment as provided in Article 5, in the proportions provided by this Declaration. 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.

3.2.3. *Maintenance Necessitated by Owner's Negligence.* Notwithstanding anything to the contrary contained in this Declaration, if the need for maintenance, repair, or reconstruction of the Common Elements, a Lot, or any other Improvement on the Property is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction, or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such persons under the laws of the State of Colorado; any costs, expenses, and fees incurred by the Association for such maintenance, repair, or reconstruction shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability shall be determined by the Association at a hearing after notice to the Owner.

3.3 Use Restrictions and Offensive Activities.

3.3.1. *No Accumulation of Trash.* No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish, or trash shall be allowed to accumulate in any Lot, or on the Common Elements. All garbage, rubbish, and trash shall be disposed of in appropriate trash receptacles and shielded from view.

3.3.2. *Residential Use Only.* No Lot shall be used for any purpose other than residential purposes and home occupations. For purposes of this section, "home occupations" shall mean an occupation by the resident conducted entirely within the Lot, 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 Lot. For example, but not by limitation, an insurance agent may use a Lot as a personal office so long as his customers are not permitted to come to his personal office; however, the establishment of a barber shop would be prohibited.

3.3.3. *Nuisances and Decisions Regarding Use.* No obnoxious, offensive, or otherwise disturbing or annoying activity that would constitute a public or private nuisance or annoyance to the Property shall be permitted. No Owner shall permit any thing or condition to exist upon his Lot that may induce, breed, or harbor infectious plant diseases, noxious weeds, invasive plants or insects. If a dispute arises as to whether a particular use of a Lot constitutes a nuisance or annoyance to the Property under this subsection, the Association, acting through the Board, shall determine the matter in its sole and absolute discretion, exercised in accordance with the Association Documents.

3.3.4. *Hazardous Activities.* No activities shall be conducted within or upon the Property or in any Lot that are or may be unreasonably hazardous to any person or property. No Owner shall use or permit its Lot to be used for the manufacture or disposal

of any substance classified or categorized as hazardous by federal, state, or local law or regulation ("Hazardous Material"), nor will any Owner do or permit any act or omission anywhere within the Property that is in violation of any federal, state, or local law or regulation. No Owner shall do or permit any act or omission anywhere within the Property that would or may cause the cancellation of any insurance. Each Owner shall indemnify and hold each other Owner and the Association, harmless from and against all costs, including attorneys' fees and other expert or professional consultants' fees, expenses, losses, liabilities, and damages of any nature, including personal injury, property damage, and remediation costs, which result or arise, in whole or in part, from the manufacture or disposal of any Hazardous Material within the Property.

3.3.5. *Firearms.* No firearms, fireworks, explosives, air rifles, BB guns, or similar devices shall be discharged within the Property.

3.4 Household Pets. No animals of any description shall be kept or maintained on any Lot. Notwithstanding the foregoing restriction, any Owner or a tenant may keep a reasonable number of dogs, cats, fish, birds or other domestic animals so long as such pets comply with the Association's rules and regulations, are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances. The Board may determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this paragraph. Such action may include, after providing notice to the Owner and the opportunity to be heard, an order directing the permanent removal of the pet or pets from the Property. Owners shall hold the Association and the Board harmless from any claim resulting from any action concerning a pet. An Owner is responsible for any damage caused to the Property by his or his tenant's pet and shall be obligated to clean up after any pet while it is on the Property. The Board may institute such rules as it deems advisable for the control of pets, and the Board may impose such fines as are necessary in its sole discretion to enforce such rules and this Declaration.

3.5 Fencing. No wall, fence, or hedge shall be erected within a Lot unless and until the height, type, location, and surrounding landscaping have been approved by the ACC. Owners shall obtain all necessary governmental or quasi-governmental approvals and permits required for the construction of any wall, fence or hedge, including, without limitation, a fence permit from Mesa County, as applicable, and shall generally comply with all federal, state and local law and regulation with respect to such construction.

3.6 Rental. All tenants or future tenants are subject to the covenants, conditions, and restrictions of this Declaration. The mere rental of any Lot or the mere act of occupancy of any Lot shall signify that the covenants, conditions, and restrictions set forth in this Declaration are accepted. Other than the foregoing obligations and restrictions, the Owners shall have the

absolute right to lease the Lots, provided that the lease is made subject to the covenants, conditions, and restrictions set forth in this Declaration.

3.7 Parking. All motor vehicles shall be parked, kept, and stored in garages, driveways, or designated parking areas only. Garages, driveways, and parking areas are for the parking of vehicles only and shall not be converted to living, recreational, or business spaces, nor shall they be used for the storage of any item(s) of any description, other than motor vehicles, which prevent motor vehicles from parking in such garages, driveways, or parking areas. No more than two (2) vehicles may be parked in front of a Residence for more than three (3) days. Parking on the Property may be further limited or restricted by the Association Documents.

3.8 Signs. Political campaign signs shall be permitted in the Property at such times and in such manner as specifically provided by federal, state, or local law. Aside from political campaign signs as provided, one (1) standard and customary "For Sale" or "For Rent" sign per Lot being offered for sale or rent that measures no larger than eighteen (18) by twenty-four (24) inches may be placed on a Lot. Signs may be used by or on behalf of Declarant for subdivision advertisement and sales. During the building and sale of a Residence, a builder may place one (1) sign upon the Lot to advertise the builder's business upon obtaining the written approval of the ACC. Signs located on the Common Elements are governed by the Association.

3.9 Miscellaneous.

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

3.9.2. All facilities for permanent utilities service shall be kept or maintained underground, or in the original condition at such time the Lot was first completed.

3.9.3. All wood piles or storage areas of any kind shall be kept screened by adequate vegetation or fencing to conceal them from view as much as possible.

3.9.4. No tanks of any kind, above or below ground, shall be permitted without written approval from the ACC.

3.9.5. No antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained out of doors, except as shall be approved and permitted by the Association, acting in accordance with federal, state, and local law or regulation.

3.9.6. No hunting, shooting, trapping, or harming of wildlife shall be permitted within the Property, except that trapping may be permitted for the removal of vermin and other pests located on a Lot by its Owner.

3.9.7. No maintenance, repair, rebuilding, dismantling, repainting or servicing activity of any kind of vehicles, trailers, boats, or vans continuing for more than twenty-four (24) hours may be performed on any Lot, unless it is done within completely enclosed structures located on the Lot that screen the sight and sound of the activity from the street and from adjoining Lots and the Common Elements. This restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities nominally incident and necessary to such washing and polishing.

3.9.8. Recreational vehicles, all-terrain vehicles, utility terrain vehicles, trailers, implements, motor homes, boats, equipment or similar items shall be screened by fences and kept from public view. Screening fences approved by the ACC shall be deemed to meet this requirement.

3.9.9. No Lot or Lots shall be further subdivided.

3.10 Easement for Maintenance and Entry. Each Owner shall afford to the Association, and to its agents or employees, access through such Owner's Lot reasonably necessary for maintenance, repair, and replacement of any Common Elements and any other property or Improvements. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other Improvement, or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. Further, each Lot shall be subject to an easement in favor of the Association (including its agents, employees, and contractors) for performing maintenance, repair, and reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants, except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants shall be warned of impending emergency entry as early as is reasonably possible.

ARTICLE 4.

THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

4.1 Purpose and Membership. By acceptance of a deed to a Lot, each Owner shall be a Member of the Association 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 Association Documents, including, without limitation, enforcement of the Declaration; repairing and maintaining the Common Elements; levying and enforcing assessments to defray the cost and expenses of operation; providing other utilities and services pursuant to the Association Documents; and for all other purposes, with such powers, as are reasonably necessary or appropriate for the discharge of its duties.

4.2 Declarant Control. During the Period of Declarant Control, the Declarant shall appoint a Board of at least three (3) members, subject to the specific limitations described and provided in the Act.

4.3 Termination of Declarant Control. The Period of Declarant Control shall terminate as provided in the Act.

4.4 Owner Control. The Owners shall elect all of the members of the Board following the termination of the Period of Declarant Control, as set forth as follows:

4.4.1. Except as otherwise provided above, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall appoint the officers. These Board members and officers shall take office upon termination of the Period of Declarant Control.

4.4.2. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a Board member appointed by the Declarant.

4.5 Voting Rights. Association membership shall be appurtenant to and may not be separated from ownership of any Lot. When more than one (1) person or entity holds an interest in any Lot, all such persons/entities shall be Members. The vote for such Lot shall be exercised by one (1) person or alternative persons appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended and disregarded if more than one (1) person or entity seeks to exercise the right to vote on any one (1) matter. In no event shall more than one (1) vote be cast with respect to any one (1) Lot. Cumulative voting shall not be permitted when electing Directors.

4.6 Registration of Owners and Security Interest Holders. Each Owner shall register a single physical mailing address and electronic mailing address with the Association in writing and update the same as necessary. All notices and other communications from the Association shall be sent to the address of the Owner then registered with the Association, and, if none is so registered, to the physical mailing address of such Owner's Lot. Any Owner that grants any Security Interest encumbering its Lot shall notify the Association in writing of the name and address of the Security Interest Holder.

4.7 Limitation upon Liability.

4.7.1. *Limited Liability and Indemnification of Directors and Officers.* Neither the Association, any Director, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action or

for any failure to act with respect to any matter related to or arising from such person's role with the Association or duties for the Association if the action taken or failure to act was in good faith and without willful or intentional misconduct. As more fully provided in the Association Documents, the Association shall indemnify and hold harmless any Director, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages, charges, liabilities, obligations, fines, penalties, claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

4.7.2. *Limitation upon Liability of Association.* Notwithstanding the duty of the Association to maintain and repair certain 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 the Owners or other persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

4.8 Architectural Control. No Improvements of any kind shall be erected, placed or altered on any Common Element, or within any Lot until the construction plans and specifications, and a plan showing the location of the structure or Improvements, have been approved by the Association, acting through its ACC, as to quality of workmanship and materials, harmony of design with existing structures, and as to siting or location, all in conformity with the Association Documents, including, but not limited to, the requirements set forth in Article 3, above.

4.8.1. *Membership of Committee.* The ACC shall consist of three (3) persons appointed by the Board, who may be Directors. The method and manner of the ACC's extension, replacement, or removal, as well as method of operation, to the extent not provided herein, shall be as set forth in the Association Documents.

4.8.2. *Submission of Plans.* Duplicate copies of plans and specifications relating to any Improvements shall be submitted to the ACC for review and final approval, one (1) copy of which will be retained by the ACC for its records. Plans and specifications shall contain, without limitation, the plot plans showing layout, floor plans showing overall dimensions, roof plans, materials, colors, elevations showing doors and windows, a perspective sketch, if requested, and other details necessary to explain any feature or component of the Improvements requested by the ACC, or required by the Association Documents.

4.8.3. *Decision of Committee.* The ACC's approval or disapproval shall be in writing. Approval or disapproval as required in this Declaration shall be determined by majority vote of the members of the ACC.

4.8.4. *Criteria for Approval.* 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 the Design Guidelines and the Association Documents and shall not be made arbitrarily or capriciously. The ACC shall generally determine whether the proposed Improvements will protect the value of the Property both at the time of the request and in the future. 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 whether the 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 Improvements, harmony of design, materials, and colors with existing Improvements and surroundings, the Design Guidelines, and other criteria it deems necessary for the purposes set forth in this subsection. 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 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.

4.8.5. *Compensation of Committee.* Neither the members of the ACC, nor such representatives as it may designate to carry out its functions under this Declaration and the Association Documents, shall be entitled to any compensation for services performed. Nothing in this subsection shall restrict the authority of the ACC, or its designated representatives, to engage and pay for the services of an appropriately qualified professional, such as an engineer or architect, for the purpose of evaluating applications, which charge will be passed along to the applying Owner. Persons so engaged shall not be construed to be representatives of the Association.

4.8.6. *Power to Grant Variances.* The ACC may authorize variances from compliance with any of the provisions of this Declaration or the Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations so require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the ACC. If any such variance is granted, no violation of the provision of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with

all governmental laws and regulations affecting the property concerned, including without limitation, development guides, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

4.8.7. *Design Guidelines.* Declarant may establish an initial set of rules, procedures, standards, guidelines and requirements, including, without limitation, architectural, design and development standards and guidelines, which shall govern the review and approval or disapproval of proposed Improvements within the Community, and other matters provided for therein, known as the Design Guidelines. The ACC may make such amendments and additions to the Design Guidelines as the ACC deems necessary or appropriate from time to time to accomplish the purposes of (and as are not in conflict with) this Declaration. The Design Guidelines (as they may be amended from time to time) are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on the Community and on all Lot Owners, occupants, and other persons as if expressly set forth herein. The ACC, in its sole discretion, shall have the right and authority to determine the existence of any violation of the Design Guidelines or of any approvals granted or other decisions made by, or other requirements of, the ACC, which determinations shall be binding on the Owners.

4.9 Acquiring and Disposing of Real and Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property and real property for such uses and purposes as the Board may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Lot. Transfer of a Lot, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal and real property without any reference thereto. Each Owner may use such personal and real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Board in its sole discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

4.10 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

4.11 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, the Association Documents, and the Act, the Association shall have the following specific powers and duties:

4.11.1. The right to charge reasonable admission and other fees for the use of any facilities or amenities situate upon or which are part of the Common Elements.

4.11.2. The right to employ or contract for the services of a manager to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association.

4.12 Books and Records. The Association shall make available for inspection upon request, during normal business hours or under other reasonable circumstances, to Owners and to Security Interest Holders, current copies of the Association Documents and the books, records, and financial statements of the Association in accordance with Colorado law. The Association may charge a reasonable fee for copying such materials.

ARTICLE 5. 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 this Declaration and the Association Documents. 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 Common Expense Assessments.

5.2.1. The common expense assessments made for Common Expenses shall be allocated to each Lot equally and 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 of the Common Elements and operation of the Association, which sums may include, among other things, sewer and water fees, expenses of management, taxes and special assessments, premiums for all insurance the Association is required or permitted to maintain, landscaping and care of grounds, common lighting, 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 or the Bylaws of the Association, any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities that may be incurred by the Association for the benefit of the Owners, less an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such year which is

attributable to the assessments levied the prior year. The sum or net advanced estimate so determined shall be assessed to the Owners as a common expense assessment allocated to each Lot equally. Assessments shall be paid in quarterly installments, or at such other times as may be determined by the Board in its discretion.

5.2.2. Within thirty (30) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting Owners entitled to cast sixty percent (60%) of the votes in the Association reject the budget, the budget is ratified, whether or not a quorum is present in person or by proxy at the meeting. If the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board through the process described in this subsection.

5.3 Special Assessments. If at any time during the fiscal year the common expense assessment levied pursuant to section 5.2, above, proves inadequate for any reason other than a determination to perform capital Improvements to the Property, including, without limitation, nonpayment of any Owner's share of Common Expenses, the Board may levy a further assessment in the amount of such actual or estimated inadequacy following the procedures in section 5.2. Any special assessment so levied shall be assessed to each Lot equally. Such special assessment shall be paid as the Association directs.

5.4 Capital Improvement Assessments. An assessment may also be levied following the general procedures described in section 5.2, above, for the purpose of defraying in whole or in part the cost of any capital Improvement upon the Property, including fixtures, landscaping, or personal property related thereto. If any assessment levied under this section is in an amount less than or equal to 75% of the then current budget for common expense assessments described in section 5.2, above, the assessment may be approved by a vote of the Board and without any approval of any kind from the members. However, if any assessment levied under this section is in an amount greater than 75% of the then-current budget for common expense assessments described in section 5.2, above, such assessment shall require the consent of the Owners to whom a majority of votes in the Association are allocated.

5.5 Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner as a result of such Owner's failure to restore or maintain his Lot as provided herein. Such reimbursement 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 and shall be due and payable as the Association directs.

5.6 Individual Purpose Assessment. Any Common Expenses or portion thereof benefiting fewer than all of the Lots may be assessed by the Board exclusively against the Lots

benefited as an "Individual Purpose Assessment." At the Board's discretion, the Association may levy such Individual Purpose Assessment as a contingency reserve (thereby increasing such Lot's Annual Assessment) to provide for the future maintenance, repair and replacement of such upgrade items (so long as those reserve funds are segregated from the general reserve funds), and the Association may levy the Individual Purpose Assessment as a special assessment against the applicable Lot or Lots at the time the expenditure is made.

The Board in its sole discretion shall make the determination if an assessment shall be an Individual Purpose Assessment levied against fewer than all of the Owners. However, all assessments for the regular planned maintenance, repair and replacement of the General Common Elements shall be a general assessment against all Lots even though such maintenance, repair and replacement work may be accomplished in phases benefiting fewer than all of the Owners at any given time.

5.7 Reserve Fund. The Association shall establish a reserve fund, funded through common expense assessments, for the maintenance, repair and replacement of the Property. The amount held in reserve may be increased or decreased as determined by the Association 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.

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

5.8.1. The Association may elect to accelerate and declare immediately due and payable the remaining balance of common or special assessments for such fiscal year.

5.8.2. 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 attorneys' fees.

5.8.3. All delinquent Common Expenses or other assessments levied under this Declaration shall be a lien on the Owner's Lot as provided for in section 5.9, enforced in accordance with the provisions of that section.

5.8.4. Beginning with the second month of delinquency, interest at the rate of 21% annually will be added to all delinquent amounts until payments are current.

5.9 Lien for Assessments.

5.9.1. The Association has a statutory lien on a Lot for any assessment levied against that Lot. Fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to this Declaration are enforceable as assessments. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations.

5.9.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board or a manager of the Association may prepare, and record in the records of the Clerk, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessment and collected as a part thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

5.10 Priority of Association Lien.

5.10.1. Pursuant to the Act, and as provided therein, a lien under this Article 5 is prior to all other liens and encumbrances. Notwithstanding anything herein to the contrary or anything in the Act to the contrary, if federal law applies, no liens for assessments shall be prior to the lien of a mortgage insured or guaranteed by the FHA, VA or other government agencies to the extent required by such federal law.

5.10.2. This section does not affect the priority of mechanics' liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of C.R.S. § 15-11-201, as amended.

ARTICLE 6. INSURANCE

6.1 Insurance. The Association shall maintain the following types of insurance on the Common Elements within the Property, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. In addition, the Association may maintain such insurance on such other property as the Board may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any governmental agencies with respect to their insurance, guaranty, or purchase of security interests.

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

6.1.2. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than \$1,000,000.00 per occurrence, insuring the Board, the Association, any manager, and their respective employees, agents, and all persons acting as agents. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one (1) or more insured parties against other insured parties.

6.1.3. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the greater of either any sum required under C.R.S. § 38-33.3-306(3) or the sum of three months' assessments on the entire Community, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's Directors, officers, managers, including, without limitation, any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners; provided, however, any manager which handles funds of the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including, without limitation, employees of the professional manager, which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

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

- (a) the maximum coverage available under the National Flood Insurance Program for all Improvements and other insurable property located within a designated flood hazard area; or

(b) 100% of current replacement cost of all Improvements and other insurable property located within a designated flood hazard area.

6.1.5. In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature, as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect Directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as Directors and officers on behalf of the Association, and coverage on fixtures, equipment, and other personal property inside Lots.

6.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies shall provide for a waiver of subrogation by the insurer as to claims against the Association, its Directors, officers, employees, agents, its Owners and members of their households. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

6.3 Deductibles. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

6.3.1. To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. If more than one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

6.3.2. Any loss to any Common Elements which the Association has the duty to maintain, repair, or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be

apportioned among the persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, the Owner's tenants, family members, guests or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

6.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in section 6.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of section 7.1, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Property is terminated.

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

6.6 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

6.7 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. The Association is not obligated to and shall not provide insurance covering the Lots, Limited Common Elements allocated to the Lots or anything in or on any Lot or Limited Common

Element as provided in section 6.1, above. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and insurance coverage for property, liability or otherwise on each Lot and Limited Common Elements if appurtenant thereto shall be the responsibility of each Owner.

6.8 Notice of Cancellation. If the insurance that is required to be carried by the Association, as provided in section 6.1 of this Article, is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE 7. DAMAGE OR DESTRUCTION

7.1 Damage or Destruction.

7.1.1. Any portion of the Property which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The common interest community created by this Declaration and made subject to this Declaration is terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (c) Owners entitled to 67% of the votes in the Association, including every vote of a Lot that will not be rebuilt, vote not to rebuild; or
- (d) The holder of a deed of trust or mortgage on the damaged portion of the Property rightfully demands all or a substantial part of the insurance proceeds.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. If the entire Property is not repaired or replaced, the insurance proceeds attributable to the damaged General Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Property, and except to the extent that other persons will be distributees, the insurance proceeds attributable to Lots that are not rebuilt must be distributed to the Owners of those Lots or to Security Interest Holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or Security Interest Holders, as their interests may appear, in proportion to the Allocated Interests as provided above. If the Owners vote not to rebuild any Lot, the Allocated Interests allocated thereto are automatically reallocated upon the

vote as if the Lot had been taken by eminent domain, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting such reallocations.

7.2 Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the General Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a special assessment in the aggregate amount of such insufficiency pursuant to Article 5 hereof, and shall proceed to make such repairs or reconstruction. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and their respective Security Interest Holders, if any. The assessment provided for herein shall be a debt of each Owner and a lien on the Owner's Lot and the Improvements thereon and may be enforced and collected in the same manner as any assessment provided for in this Declaration.

7.3 Destruction of Lots. If due to casualty, or for any other reason, the space within a Lot shall be destroyed or damaged, then the Owner thereof shall, within a reasonable time thereafter, not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, commence and diligently pursue repair and reconstruction of the space within a Lot using any available personal insurance proceeds and personal funds of such Owner, unless the General Common Elements are not repaired and reconstructed as hereinabove provided.

ARTICLE 8. CONVEYANCES, OWNERSHIP AND TAXATION OF LOTS

8.1 Taxation. Each Lot shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act. For purposes of such assessments, the valuation of the Common Elements shall be apportioned among the Lots in proportion to the Allocated Interests, except as otherwise provided in this Declaration. The Association shall furnish to the Tax Assessor of the County of Mesa, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Lot.

8.2 Inseparability. Each Lot, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Lot. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Lot shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Lot, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

ARTICLE 9.
MECHANIC'S LIENS

9.1 Mechanic's Liens. No labor performed or materials furnished for use and incorporated in any Lot with the consent or at the request of the Owner thereof, the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the space within the Lot of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Lot of any other Owner, the Common Elements, or any part thereof, for labor performed or materials furnished in work on the first Owner's Lot.

9.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by section 9.1 of this Article by collecting from the proper Owner the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge of such lien. If such Owner refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this section 9.2 and such amount to be indemnified shall be and constitute an additional assessment for collection by the Association subject to all of the provisions of Article 5.

9.3 Effect of Part Payment. If a lien attributable to labor performed or materials furnished on the Property or any portion thereof is claimed against two (2) or more Lots, the Owner(s) of any of the affected Lots may pay to the lienholder the amount of the lien attributable to such Owner's Lot and the lienholder shall release such Lot from the lien. Partial payment and release of any such lien with respect to any Lot(s) shall not prevent the lienholder from enforcing his rights against the Lot(s) for which payment has not been received.

ARTICLE 10.
SPECIAL DECLARANT RIGHTS

10.1 Special Declarant Rights. Declarant reserves for itself and its successors and assigns, certain development and special declarant rights that include the right to:

10.1.1. redesignate uses, to relocate boundaries between Lots, enlarge, reduce, or diminish the size of the Common Elements, subdivide Lots or complete or make

improvements, as the same may be indicated on maps and plats filed of record or filed with this Declaration;

10.1.2. add, create, or construct additional Lots, and Common Elements, or to convert Common Elements into Lots;

10.1.3. withdraw all or any part of the Property from the Community, provided portions of the Property cannot be withdrawn once the Lot(s) is conveyed to an Owner other than Declarant;

10.1.4. make amendments to this Declaration and the Association Documents to meet or comply with any requirements of FHA or VA;

10.1.5. use, and to permit others to use, easements through the Common Elements, as may be reasonably necessary;

10.1.6. appoint or remove any officer of the Association or any Director during the Declarant control period;

10.1.7. maintain mobile and other sales offices, parking lots, management offices, and models on the Common Elements or Lots owned by Declarant;

10.1.8. maintain signs and advertising Lots within the Property for sale;

10.1.9. establish, from time-to-time, by dedication or otherwise, public streets, utility and other easements for purposes, including without limitation, public access, access paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions;

10.1.10. enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulations of parking or recreational facilities or Common Elements, which may or may not be a part of the Property; and

10.1.11. perform warranty work, and repairs and construction work, and to store materials in secure areas, and in the Common Elements, and the future right to control such work and repairs and the right to access thereto, until completion. All work may be performed without the consent or approval of any Owner or Security Interest Holder. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

10.2 Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the records of the Clerk. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. §§ 38-33.3-209(6) and 210 without the consent of the Association, any Owners, or any Security Interest Holder. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the records of the Clerk. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. §§ 38-33.3-209(6) and 210 with the consent of the appropriate Owner or Security Interest Holder.

10.3 No Further Authorization Needed. The consent of Owners or Security Interest Holders shall not be required to exercise any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Property beyond the number of Lots initially submitted.

10.4 Termination of Reserved Rights. The rights reserved by Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by Declarant and recorded in the records of the Clerk.

ARTICLE 11. GENERAL PROVISIONS AND MISCELLANEOUS

11.1 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.

11.2 Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

11.3 Number and Gender. Whenever used in this Declaration, unless the context shall otherwise provide, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

11.4 Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Subject to Article 10 or as otherwise limited by the Act, this Declaration may be amended for any purpose whatsoever by vote or agreement of Owners of Lots to which a majority of the votes in the Association are allocated. Any amendment must be recorded in the real property records of the Clerk.

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

11.6 Landscaping, Soils and Environmental Matters.

11.6.1. THE ASSOCIATION SHALL MAINTAIN THE ASSOCIATION WATER IN SUCH A FASHION THAT THE SOIL SURROUNDING THE FOUNDATIONS OF THE RESIDENCES AND OTHER IMPROVEMENTS SHALL NOT BECOME SO IMPREGNATED WITH WATER THAT THEY CAUSE EXPANSION OF OR SHIFTING OF THE SOILS SUPPORTING THE IMPROVEMENTS OR OTHER DAMAGE TO THE IMPROVEMENTS AND DO NOT IMPEDE THE PROPER FUNCTIONING DRAINAGE, LANDSCAPING, OR SPRINKLER SYSTEMS AS ORIGINALLY INSTALLED. SUCH MAINTENANCE SHALL INCLUDE, WHERE NECESSARY, THE REMOVAL OR REPLACEMENT OF IMPROPERLY FUNCTIONING DRAINAGE OR IRRIGATION SYSTEM ELEMENTS AND SHALL ALSO INCLUDE PREVENTING PONDING AND REGRADING AND RESURFACING WHERE NECESSARY TO PROVIDE FOR ADEQUATE DRAINAGE AND PREVENTING ANY CHANGES IN DRAINAGE IN SUCH A WAY AS TO ENDANGER THE STRUCTURAL INTEGRITY OR THE STABILITY OF ANY OF THE LANDSCAPING, WALKWAYS, WALKS, DRAINAGE OR IRRIGATION SYSTEMS, OR THE OTHER IMPROVEMENTS UPON THE PROPERTY. THE ASSOCIATION AND THE OWNERS SHALL INDEMNIFY DECLARANT FROM ANY LIABILITY, CLAIMS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, RESULTING FROM ANY BREACH OF THIS PROVISION.

11.6.2. THE OWNERS ACKNOWLEDGE AND UNDERSTAND THAT SOIL, ECOLOGICAL AND/OR ENVIRONMENTAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, RADON GAS, HAZARDOUS OR TOXIC SUBSTANCES, MAY AFFECT THIS PROPERTY AND THAT DECLARANT DOES NOT WARRANT AND INSTEAD AFFIRMATIVELY DISCLAIMS ANY LIABILITY FOR ANY EXISTING OR FUTURE SOIL, ECOLOGICAL OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY, AND THAT THE SOIL IN THE COLORADO AREA CONTAINS CLAY AND OTHER SUBSTANCES WHICH MAY

CAUSE IT TO SWELL OR COLLAPSE WHEN WET AND SO CAN CAUSE EARTH MOVEMENT AROUND A RESIDENCE'S FOUNDATION; THE OWNERS ACCEPT THE SOIL CONDITIONS, THE FOUNDATIONS AND THE RESIDENCES SO INSTALLED WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS.

11.6.3. THE U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA") STATES THAT EXPOSURE TO ELEVATED LEVELS OF RADON GAS CAN BE INJURIOUS. ANY TEST TO MEASURE THE LEVEL OF RADON GAS CAN ONLY SHOW THE LEVEL AT A PARTICULAR TIME UNDER THE CIRCUMSTANCES OCCURRING AT THE TIME OF TESTING. DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS ARE NOT QUALIFIED TO MEASURE RADON GAS OR TO EVALUATE ALL ASPECTS OF THIS COMPLEX AREA OF CONCERN. PRIOR OR SUBSEQUENT TO CLOSING OF THE OWNER'S PURCHASE OF A LOT AND/OR RESIDENCE, THE OWNER MAY WISH TO TEST FOR THE PRESENCE OF RADON GAS AND TO PURCHASE OR INSTALL DEVICES THAT MAY BE RECOMMENDED BY QUALIFIED RADON SPECIALISTS. DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, EXPRESSLY DISCLAIM AND THE OWNER AND THE ASSOCIATION AGREE TO WAIVE AND RELEASE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, FROM ANY CLAIM OF LIABILITY OR RESPONSIBILITY WITH RESPECT TO RADON GAS AND RELATED MATTERS AND TO HOLD HARMLESS FROM ANY CLAIMS OR LIABILITY AGAINST DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS OR ASSIGNS WITH RESPECT TO RADON GAS AND RELATED MATTERS.

11.6.4. FIBERGLASS INSULATION (ALSO KNOWN AS GLASS WOOL) IS COMMONLY USED FOR INSULATION OF HOMES. FIBERGLASS IN VARIOUS THICKNESSES AND VALUES IS USED IN THE AREAS OF WALLS, FLOOR TO CEILING, ASSEMBLIES AND CEILING TO ROOF ASSEMBLIES OF HOMES TO PREVENT MOVEMENT OF HEAT AND TO REDUCE NOISE. THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRODUCED A REPORT THAT LISTS GLASS WOOL AS A SUBSTANCE "WHICH MAY BE REASONABLY ANTICIPATED TO BE A CARCINOGEN," BUT THAT REPORT MERELY IDENTIFIES SUBSTANCES SELECTED FOR FURTHER STUDY BECAUSE OF POTENTIAL RISK. THE LISTING OF A SUBSTANCE IN THE REPORT IS NOT AN ASSESSMENT THAT THERE IS A CASUAL CONNECTION BETWEEN GLASS WOOL AND ILLNESS. THE OWNERS AND THE ASSOCIATION ACKNOWLEDGE THAT FIBERGLASS IS USED IN THE RESIDENCES, AND WAIVE ANY CLAIMS AGAINST DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, ARISING AS A RESULT OF THE USE OF FIBERGLASS INSULATION, AND AGREE TO HOLD

DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM THE EXISTENCE OF FIBERGLASS INSULATION IN THE RESIDENCES.

11.6.5. THE ASSOCIATION AND THE OWNERS AGREE TO DO NOTHING WHICH WOULD CHANGE THE GRADING OR LANDSCAPING SO AS TO CAUSE OR PERMIT POOR DRAINAGE OR OTHER DAMAGE TO THE RESIDENCES, TO ACCEPT THE SOIL CONDITIONS, LANDSCAPING, INSULATION, RADON, ECOLOGICAL AND ENVIRONMENTAL CONDITIONS, WHICH NOW OR HEREAFTER EXIST ON THE PROPERTY, AND TO RELEASE AND INDEMNIFY DECLARANT FROM ANY LOSS, DAMAGE AND EXPENSE RESULTING FROM ANY OF THE FOREGOING.

11.7 Disclosures, Disclaimers and Releases. NO REPRESENTATION, PROMISE OR WARRANTY HAS BEEN MADE BY DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS REGARDING THE INVESTMENT POTENTIAL OF THE LOTS, ANY ECONOMIC BENEFIT TO THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, TO BE DERIVED FROM THE MANAGERIAL OR OTHER EFFORTS OF DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, OR ANY OTHER THIRD PARTY DESIGNATED OR ARRANGED BY DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, RELATED TO THE OWNERSHIP OR RENTAL OF THE LOTS, OR REGARDING THE CONTINUED EXISTENCE OF ANY VIEW FROM THE LOTS. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS UNDERSTAND THAT DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS ARE UNDER NO OBLIGATION WITH RESPECT TO FUTURE PLANS, ZONING OR DEVELOPMENT OF ADDITIONAL PROPERTY IN THE AREA. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS UNDERSTAND THAT THE SIZES AND TYPE OF RESIDENCES MAY CHANGE AT THE SOLE DISCRETION OF DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, AND THAT THE SALES PRICES MAY DECREASE OR INCREASE AT THE SOLE DISCRETION OF DECLARANT.

BY ACQUIRING TITLE TO A LOT, THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT EXCEPT FOR ANY WRITTEN LIMITED WARRANTY, DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE RESIDENCES, THE PROPERTY, OR ANY IMPROVEMENTS RELATED THERETO OR ANY ELECTRICAL, PLUMBING, HEATING, GAS, WATER, SEWER, STRUCTURAL COMPONENTS, OR OTHER MECHANICAL OR UTILITY SYSTEMS OR COMPONENTS OR APPLIANCES OR FIXTURES RELATED THERETO. THE OWNERS AND THE

ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS FROM ALL CLAIMS RELATED THERETO, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

THE OWNERS, THEIRS HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION COVENANT AND AGREE THAT DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS SHALL NOT BE LIABLE FOR CLAIMS RELATING TO THE RESIDENCES, LOTS OR TO THE PROPERTY AS TO ANY DEFECT IN WORKMANSHIP OR IN ANY MATERIAL USED IN CONSTRUCTION UNLESS OTHERWISE PROVIDED IN A SPECIFIC WRITTEN LIMITED WARRANTY SIGNED BY DECLARANT. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, AND THE ASSOCIATION, EXPRESSLY WAIVE AND RELEASE ALL RIGHTS TO SUE FOR A DEFECT IN CONSTRUCTION OF THE RESIDENCES, LOTS OR THE PROPERTY AND SHALL RELY SOLELY ON THE OWNER'S OWN INSPECTION AND EXAMINATION OF THE RESIDENCES, LOTS AND PROPERTY AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE SALES PRICES OF THE RESIDENCES AND/OR LOTS ARE BASED IN PART UPON THE RELEASES, WAIVERS AND INDEMNITY CONTAINED IN THIS SECTION AND THE OTHER PROVISIONS OF THE DECLARATION.

IN WITNESS WHEREOF, Declarant sets its hand the 16th day of October, 2021.

Vista Mesa, LLC

By: 

Darin Carei, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 6th day of October, 2021, by Darin Carei, Managing Member of Vista Mesa, LLC.

My commission expires: 04/14/2022.
Witness my hand and official seal.

Kim A. Kerk
Notary Public

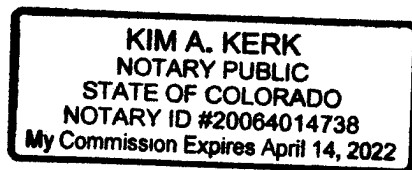


EXHIBIT A

Lots 1-22, Block 1, and
Lots 1-18, Block 2, and
Outlots B, C, D, E, F, G and H

Vista Mesa Subdivision, according to the plat thereof recorded or to be recorded in the records of Clerk

County of Mesa, State of Colorado.