

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LIBERTY RANCH SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions for Liberty Ranch Subdivision (Declaration) is made the \_\_\_\_\_ day of \_\_\_\_\_, by Five Star Land Holdings, Inc.

**RECITALS**

A. Declarant is the owner of real property in Mesa County, Colorado (the "Community"), legally described as:

LIBERTY RANCH SUBDIVISION,  
Mesa County, Colorado

B. Declarant is also the owner of certain real property more particularly described as 2524 G Road, Mesa County, Colorado according to plat thereof (the "Expansion Property").

C. Declarant desires to adopt a general plan for the improvement, development and maintenance of the Community, and to adopt and establish covenants, conditions and restrictions upon the Community for the purpose of enhancing, maintaining and protecting the value and desirability of the real estate within the Community.

D. Declarant also reserves the right, but not the obligation, to expand the Community through the addition of some or all of the Expansion Property from time to time. Each addition, expansion or further development of the Community shall be accomplished by the recording of a Supplemental Declaration, together with a Supplemental Plat or Map, which describe and depict any new Lots, Common Areas or other portions of the property thereby added to the Community. Any Supplemental Declaration shall incorporate the provisions of this Declaration by reference and may set forth any amendments to this Declaration including any additional or different covenants, conditions, restrictions, and reserved development rights as may be applicable to the property subject to that Supplemental Declaration.

E. Declarant deems it desirable to set aside a portion of the Community as common area for the use of the owners of lots within the Community from time to time, and to establish a Colorado nonprofit corporation, Liberty Ranch Subdivision Homeowners Association, to which such common area from time to time shall be conveyed.  
Colorado nonprofit corporation, Liberty Ranch Subdivision Homeowners Association, to which such common area from time to time shall be conveyed

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

## ARTICLE 1 **DEFINITIONS**

Section 1.01. "Architectural Control Committee" or "ACC" shall mean and refer to the committee appointed by Declarant or by the Board of Directors, as more fully provided in Article 8.

Section 1.02. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as such may be amended from time to time.

Section 1.03. "Assessment" shall mean and refer to any assessment levied against one or more Owner(s) or Lot(s) as permitted by this Declaration or applicable law, including without limitation any of the following:

(a) "Regular Assessment" shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot, including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.

(b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his or her Lot as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his or her employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a Special Assessment.

(c) "Capital Assessment" shall mean and refer to a charge against any Lot representing a portion of the Association's cost for the purchase, installation, construction, or expected or unexpected repair or replacement, of any capital improvement (including the necessary fixtures and personal property related to it) that is a Common Expense of the Association, plus reserves for repair or replacement of existing capital items, and acquisition, construction and installation of new capital improvements.

(d) "Working Fund Assessment" shall mean and refer to a non-refundable payment by the first owner of a Lot other than Declarant in the amount of One Hundred Dollars (\$100.00) which shall be deposited in an Association account as a working fund contribution.

Section 1.04. "Association shall mean and refer to Liberty Ranch Subdivision Homeowners Association, a nonprofit corporation under Colorado law.

Section 1.05. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.06. "Bylaws" shall mean the Bylaws of the Association as such may be amended from time to time.

Section 1.07. "CCIOA" means the Colorado Common Interest Ownership Act, presently codified at C.R.S. § 38-33.3-101, *et seq.*, as it may subsequently be amended from time to time.

Section 1.08. "Common Areas" shall mean any and all real property, and the improvements and fixtures on it, owned, leased or controlled by the Association for the common use and enjoyment of the Members, including, but not limited to, any irrigation pipes, pumps and other facilities, retention areas, landscaping, and street or lighting fixtures owned or controlled by the Association, as well as signage on any Common Area or for the general benefit of the Community or Owners, whether or not located on the real property owned or leased by the Association. The Common Areas are shown on the Plat.

Section 1.09. "Common Expenses" shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.10. "Conveyance" shall mean and refer to transfer of a fee simple title by deed, installment land purchase contract or otherwise of any part of the Community.

Section 1.11. "Declarant" shall mean and refer to Five Star Land Holdings, Inc. and its successors and assigns designated in writing to be the successor of Declarant,

subject to any limitation on transfer of Development Rights contained in this Declaration, CCIOA or other applicable law.

Section 1.12. "Development Rights" shall mean and refer to any right or combination of rights reserved by Declarant as set forth in this Declaration, including, but not limited to, Article 10.

Section 1.13. "Development Period" shall mean and refer to that period of time which begins upon the initial recording of this Declaration in the real property records of Mesa County, Colorado and ends upon the earlier of twenty (20) years, or when all of the Lots That May Be Created have been conveyed to the first Owner thereof (other than Declarant).

Section 1.14. "Expansion Property" shall mean and refer to all or any portion of Lot \_\_\_\_\_, Liberty Ranch Subdivision according to the plat thereof, recorded or to be recorded in the real property records of the Mesa County Clerk and Recorder.

Section 1.15. "Lot" shall mean and refer to each numbered lot of the Community described in the Plat, as such may be amended or supplemented. Boundaries of a Lot shall be as shown and defined on the Plat.

Section 1.16. "Lots That May Be Created" shall mean and refer to \_\_\_\_\_ Lots, which shall be the maximum number of Lots that may be subject to this Declaration.

Section 1.17. "Member" shall mean and refer to every person or entity who holds a membership in the Association; membership in the Association is appurtenant to, and may not be separated from, ownership of a Lot.

Section 1.18. "Owner" shall mean and refer to Declarant and to any other person or entity holding a fee simple ownership interest in any Lot that is a part of the Community but excluding mortgagees (unless and until a mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.19. "Person" shall include one or more individuals or entities, as the circumstances require.

Section 1.20. "Plat" shall mean and refer to that certain plat of the Community, which is recorded or to be recorded in the Mesa County Clerk and Recorder's records, including any amendments, additions, or supplements thereto.

Section 1.21. "Community" shall mean and refer to that certain real property in Mesa County, Colorado, described in Recital A and as further shown and described on the Plat, together with such additions, if any, as may subsequently be brought within the jurisdiction of the Association by expansion or amendment of this Declaration by exercise of Development Rights or otherwise.

Section 1.22. "Residence" means the single-family dwelling improvements (including garage, whether attached or detached, but excluding any outbuildings) located on a Lot.

## ARTICLE 2 **THE ASSOCIATION**

Section 2.01. Membership. Every Owner of one or more Lots in the Community shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article 2. There shall be one class of membership in the Association. No person or entity other than an Owner of one or more Lots in the Community may be a Member of the Association. No Owner shall be entitled to sever his or her ownership interest in a Lot from membership in the Association; provided, however, this shall not be construed as precluding the Owner of a Lot from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership with any other person or persons.

Section 2.02. Allocation of Votes. Each Lot that may be created by the terms of this Declaration shall be allocated one vote in the Association, subject to Section 2.06. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of such Owners. There is majority agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

Section 2.03. No Cumulative Voting. Cumulative voting shall not be allowed in the election of directors of the Association.

Section 2.04. Membership Appurtenant. Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by conveyance of a Lot without additional action or documentation.

Section 2.05. Transfer Fee. The Association may impose a transfer fee of \$200.00, or such other amount determined by the Board of Directors of the Association, upon each Conveyance of a Lot.

Section 2.06. Directors of the Association. The affairs of the Association shall be managed initially by a Board of Directors consisting of five (5) directors appointed by the Declarant. When Declarant relinquishes control of the Board to the Owners pursuant to Section 2.06, the Board shall be comprised of not less than three (3) directors, with the number of directors specified in the Bylaws.

Section 2.07. Management of the Association.

(a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (i) twenty (20) years after the date of recording of this Declaration (the period of Declarant's control) in the real property records of Mesa County, Colorado; (ii) sixty (60) days after Conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant or, (iii) two (2) years after the most recent Conveyance of a Lot by Declarant in the ordinary course of business, Declarant may appoint and remove all Association officers and all members of the Board of Directors, subject to the limitations stated in this Section 2.06.

(b) Not later than sixty (60) days after Conveyance of twenty-five percent (25%) of the Lots that may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not less than twenty-five percent (25%) of the members, of the Board of Directors must be elected by Owners other than Declarant.

(c) Not later than sixty (60) days after Conveyance of fifty percent (50%) of the Lots that may be created by the terms of this Declaration to Owners other than Declarant, not less than thirty-three and one third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than Declarant.

(d) Upon the termination of the period of Declarant control specified in Section 2.06(a), the Owners shall elect a Board of Directors in accordance with Section 2.05 who must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.

(e) Notwithstanding anything to the contrary stated elsewhere in this Section 2.06, by a vote of sixty-seven percent (67%) of all persons present and entitled to vote at any meeting of the Members at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a director appointed by Declarant.

(f) 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 the Board (as described in a recorded instrument executed by Declarant) be approved by Declarant before they become effective.

(g) 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 C.R.S. § 38-33.3-303(9).

Section 2.08. Quorum. Quorum requirements are specified in the Bylaws.

Section 2.09. Officers of the Association. The Officers of the Association are specified in the Bylaws.

Section 2.10. Authority. The Association shall have all rights, powers and authority specified or permitted by this Declaration, the Articles of Incorporation, the Bylaws, CCIOA or any other applicable law; to the extent permitted by law.

Section 2.11. Rules and Regulations. Rules and regulations concerning and governing the Lots, Common Areas, and/or this Community may be adopted, amended or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations.

Section 2.12. Duties and Obligations. The Association shall perform all duties and obligations specified in this Declaration, the Articles of Incorporation and the Bylaws, including, but not limited to, maintenance and upkeep of all Common Areas to include maintenance of the detention basin. Further, to promote responsible governance, the Association shall adopt rules and regulations concerning the investment of reserve funds, the procedure for the adoption and amendment of policies, procedures and rules, and the procedure for addressing disputes arising between the Association and Owners.

Section 2.13. Actions against Owners. The Association may take judicial action against any Owner to enforce compliance with any provision of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance, and may exercise any other right or remedy for enforcement of this Declaration permitted by law.

Section 2.14. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate or convey all or any part of the Common Areas or any other Association asset. However, no such encumbrance, dedication or conveyance shall be effective unless an instrument signed by Members entitled to cast sixty-seven percent (67%) of the votes agreeing to such encumbrance, dedication or conveyance has been recorded in the real property records of Mesa County, Colorado. Any of the instruments required by this Section 2.13 may be signed in counterparts that shall together constitute a single agreement.

Section 2.15. Management Agreement and Other Contracts.

(a) The Association may utilize professional management in performing its duties. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years and shall provide for termination by either party to it, with or without cause and without payment of a termination fee, upon thirty (30) days' prior written notice.

(b) Any contracts, licenses or leases entered into by the Association while Declarant controls the Association shall provide for termination by either party to it, with

or without cause and without payment of a termination fee, at any time after termination of Declarant's control of the Association, upon thirty (30) days' prior written notice.

Section 2.16. Public Disclosures after Declarant Control. Within ninety (90) days after assuming control from Declarant pursuant to Section 2.06, the Association shall make the following information available to Owners by posting on an internet web page (if the Owners have been previously notified of the web address via mail or e-mail), maintaining a literature table or binder at the Association's principal place of business, or by mail or personal delivery:

- (a) The name of the Association;
- (b) The name of the Association's designated agent or management company, if any;
- (c) A valid physical address and telephone number for both the Association and the designated agent or management company, if any;
- (d) The name of the common interest community;
- (e) The initial date of recording of the Declaration;
- (f) The reception number or book and page for the map document that constitutes the Declaration;
- (g) The date on which the Association's fiscal year commences;
- (h) The Association's operating budget for the current fiscal year;
- (i) A list, by type of Lot or unit, of the Association's current Assessments, including both Regular and Special Assessments;
- (j) The Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (k) The results of the Association's most recent available financial audit or review;
- (l) A list of all Association insurance policies, including but not limited to property, general liability, Association director and officer professional liability, and fidelity, which shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed;
- (m) The Articles of incorporation, Bylaws and any rules and regulations of the Association;



(n) The minutes of the Board and Member meetings for the fiscal year immediately preceding the current annual disclosure; and

(o) Any rules, regulations and procedures concerning the investment of reserve funds, the adoption and amendment of policies, procedures and rules, and the resolution of disputes between the Association and Owners.

Section 2.17. Annual Public Disclosures. Within ninety (90) days after the end of each fiscal year of the Association, the Association shall make available (by the same methods described in Section 2.05) the information described in Sections 2.15(g) through 2.15(0).

Section 2.18. Irrigation Water.

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

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

(c) Maintenance and Repair. It shall be the obligation of the Association to own, operate, maintain and repair the irrigation facilities distributing water to the Common Areas.

(d) Use of Easements. The Association may use any easement across the Lots where designated on the Plat to operate, maintain, and repair the irrigation facilities, including, but not limited to, easements designated for recreation, utility or general purposes.

(e) Assessment. The cost of the operation, maintenance and repair of the irrigation facilities and irrigation water shall be a regular assessment to all of the Owners under Article 4.

Section 2.19. Limitation of Liability.

(a) Indemnification of Officers and Board Members. The Association, any member of the Board, any officer of the Association, any member of the ACC, and any agent or employee of the Association, shall not be liable to any Owner or other Person or entity for any action or any failure to act with respect to any matter related to or in

furtherance of this Declaration, provided the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any member of the ACC, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such Person or of the Association, the Board, the ACC or any committee of the Association, where such act, omission, error or negligence was under color of Association duties or functions, provided that such Person has acted in good faith and without willful or intentional misconduct.

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

### ARTICLE 3 **PROPERTY RIGHTS IN THE LOTS AND COMMON AREAS**

Section 3.01. Title to the Common Areas. When required by law, but not later than sixty (60) days after initial sale of the last Lot that may be created by this Declaration, Declarant shall convey fee simple title to the Common Areas to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and liens and encumbrances and other title exceptions of record on the date of recording of this Declaration.

Section 3.02. Association Authority Over Common Areas. The Association has the following rights and authority over the Commons Areas:

(a) The Association may adopt rules and regulations regarding the use and enjoyment of the Common Areas;

(b) The Association may dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; no such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members entitled to cast sixty-seven percent (67%) of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than sixty (60) days in advance; and

- (c) The Association may close or limit the use of the Common Areas.

Section 3.03. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Common Areas to his or her family members, licensees and invitees, or tenants or contract purchasers who are in possession of such Member's Lot.

Section 3.04. Waiver of Use. No Member may exempt himself or herself from personal liability for Assessments duly levied by the Association or release the Lot(s) owned by such Member from the liens and charges created by CCIOA or this Declaration, by waiver of the use and enjoyment of the Common Areas or the facilities on it, or by abandonment of his or her Lot.

Section 3.05. General Restrictions.

(a) All Owners of Lot(s), by their acceptance of their respective deeds or other conveyances causing them to become Owners, covenant and agree that the Common Areas shall remain undivided, and no Owner shall bring any action for partition (which right is expressly waived), it being agreed that this restriction is necessary to preserve the rights of Owners with respect to the operation and management of the Community.

(b) No Owner shall engage in any activity that may be inconsistent with or interfere with the intended purposes of the Common Areas or that may temporarily or permanently deny free access to any part of the Common Areas to all Members, nor shall any Owner place any structure or fence (except those installed by Declarant) upon the Common Areas.

ARTICLE 4  
**COVENANT FOR ASSESSMENTS**

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each improved Lot within the Community, covenants (and each Owner of any improved Lot by acceptance of a deed or other conveyance for that Lot, whether or not it shall be so expressed in that instrument, is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; (b) all fees, charges, late charges, attorney fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by C.R.S. § 38-33.3-316(1) or any other provision of CCIOA or by any other applicable law. A Lot shall be deemed to be improved, and the obligation to pay Assessments, other than Working Fund Assessments, shall commence, upon issuance of the certificate of occupancy for a Residence on the Lot. The Association shall have the right, independent of CCIOA, to impose reasonable charges for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws or the rules and regulations of the Association.

Any charge set forth in this Section 4.01, from the time such charge becomes due, shall be a charge on and covenant running with the land, and shall be a continuing lien on the Lot against which each such item is assessed. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. A valid acceleration of installment Assessment obligations may be made by the Board at any time any Assessment or Assessment installment is at least thirty (30) days overdue.

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

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

Section 4.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety or welfare of the residents of the Community; for the benefit of the Common Areas; or for any other purpose of the Association, as those purposes (as amended from time to time) are specified in this Declaration, the Bylaws or the Articles of Incorporation; or as otherwise authorized or permitted by CCIOA or other applicable law.

Section 4.03. Initial Assessment.

(a) The initial Assessment of any particular type, except for Working Fund Assessments, shall be fixed in an amount set by, and made upon the resolution of, the Board of Directors.

(b) After an Assessment of any type has been made by the Association, Assessments of the same type (other than Special Assessments and Capital Assessments, which may be made at any time and from time to time) shall be made no less frequently than annually, based on a budget adopted by the Association as described in this Declaration.

(c) The initial Regular Assessment applicable to a Lot after issuance of a certificate of occupancy for a Residence on such Lot shall be adjusted according to the number of months remaining in the fiscal year for which the Assessment is made, if less than a full year.

Section 4.04. Notice of Assessments, Due Dates. The Board shall fix the amount of such annual Assessments at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Regular Assessment and due date shall be sent to every Owner subject to the Assessment. The due date(s) shall be established by the Board of Directors. The Association shall, upon request and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. Special Assessments and Capital Assessments may be made by the Board at any time, except as limited by this Declaration, CCIOA or other applicable law

Section 4.05. Working Fund Assessments. Working Fund Assessments shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Lot and shall be for the use and benefit of the Association. Such payment shall not relieve an Owner of making regular payments of Assessments as the same become due.

Section 4.06. Expense Allocation. Except as otherwise stated in this Article 4, or as otherwise provided by CCIOA or other applicable law, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of platted Lots then in the Community. Despite anything to the contrary stated in this Section 4.05, if permitted or required by this Declaration (see for example Section 4.06), CCIOA or other applicable law, any Common Expense or portion of any Common Expense or other cost or expense to the Association benefiting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

Section 4.07. Owner's Actions. In the event that the need for maintenance, repair, replacement, reconstruction or reconfiguration of Common Areas, or any other Common Expense, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any family or household member, guest or invitee of such Owner, such expense and all related fees, costs and expenses of or to the Association shall be the personal obligation of such Owner and may be made part of any Assessment against such Owner and that Owner's Lot(s). Negligence or the willful act or omission of any Owner or any family or household member, guest or invitee of such Owner, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at an informal hearing after notice to the Owner, provided that any such determination that assigns liability to any Owner pursuant to the terms of this Section 4.06 may be appealed by such Owner to a court of law.

Section 4.08. Priority of Lien. The lien for Assessments, which includes, without limitation, all those items specified in Section 4.01, shall have the priority specified in CCIOA, C.R.S. § 38-33.3- 316(2), or other applicable law.

ARTICLE 5  
**BUDGET AND RECORDS**

Section 5.01. Books and Records. Association policies and regulations regarding records, retention of records, and Member access to records are specified in the Bylaws.

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

Section 5.03. Delivery of Budget. Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail by ordinary first-class mail or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget which shall be within a reasonable time after mailing or other delivery of the summary. The meeting shall be not less than fourteen (14) days and not more than sixty (60) days after the mailing of the proposed budget.

Section 5.04. Ratification of Budget. Unless at the meeting Owners representing sixty-seven percent (67%) of all Lots veto the budget, the budget is ratified, whether or not a quorum is present.

Section 5.05. Rejection of Budget. If the proposed budget is vetoed, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 5.06. Reserve Fund. As part of each annual budget, the Board of Directors shall include an amount that, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the repair or replacement of any personal property, fixtures and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost and any other relevant factors. Any reserve funds may be deposited in such interest-bearing account(s) as the Board of Directors deems appropriate.

Section 5.07. Audit and Review. Upon the request of at least one third (1/3) of the Members, the books and records of the Association shall be subject to a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant (except in the case of an audit), but shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

Section 5.08. Fiscal Year. The fiscal year of the Association shall initially be the calendar year, but the Association may adopt a different fiscal year, for Assessments or otherwise, if permitted by law.

ARTICLE6  
**NONPAYMENT OF ASSESSMENTS**

Section6.01.     Delinquency. Any Assessment provided in this Declaration that is not paid when due is delinquent. If any such Assessment is not paid within thirty (30) days after the due date without additional notice or demand, the Assessment shall bear interest from the due date at a rate not to exceed the maximum rate of interest permitted by CCIOA or other applicable law, as determined by the Board.

The Association may, at its option, exercise any right or remedy available to the Association under applicable law, including, without limitation, bringing an action at law against the Owner personally obligated to pay the same or foreclosing the lien provided in Section 4.01 against the Lot(s) as to which the Assessment has not been paid; and in any case there shall be added to the amount of such Assessment interest and all costs that may be incurred by the Association in its collection of the Assessment, including reasonable attorneys' fees. Each Owner vests in the Association or its assigns the right and power to bring all actions or proceedings at law or in equity or to institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 6.02.     Nature of Obligation and Lien.

(a)     The obligation for such payments by each Owner to the Association is a personal obligation of the Owner and an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The Board or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness and the name of the Owner of the Lot and description of the Lot. Such a notice shall be signed by one member of the Board or by the managing agent of the Association and may be recorded in the real property records of Mesa County, Colorado. The lien for each unpaid Assessment attaches to each Lot at the beginning of each Assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass by Conveyance of a Lot.

(b)     The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot, except: (i) liens and encumbrances recorded before the recordation of this Declaration; and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association that

would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section 6.02 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(c) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recording of any claim of lien or assessment is required; however, a notice of lien may be recorded at the Association's option, in which event, costs and attorneys' fees incurred in connection with the preparation and filing of such notice shall be assessed against the Owner's Lot as a default assessment.

Section 6.03. Foreclosure Sale. Any foreclosure sale related to an Assessment lien is to be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same in the name of the Association.

Section 6.04. Curing of Default. Upon the timely filing any Assessment delinquency, the Association is authorized to file or record a certificate setting forth the satisfaction of such claim and release of such lien upon payment by the defaulting Owner of a fee determined by the Association to cover the costs of preparing and filing or recording such release, and other expenses incurred.

Section 6.05. Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale under it shall be in addition to, and not in substitution of, all other rights and remedies the Association and its assigns may have under this Declaration and then applicable law, including, without limitation, a suit to recover a money judgment for unpaid Assessments as provided above, all of which rights and remedies shall be cumulative.

## ARTICLE 7

### **CONSTRUCTION AND DESIGN GUIDELINES; USE RESTRICTIONS**

Section 7.01. Lot Use. Lots shall be used only for single family residential purposes. No building shall be erected, or otherwise altered, placed or permitted to remain on any Lot except in accordance with the terms and conditions of this Declaration. More than one Residence per Lot is prohibited.

Section 7.02. Building Location. The ACC must approve the location of any building upon a Lot before any excavation may begin. No building shall be located on any Lot nearer to the front lot line, rear lot line, or interior lot line than permitted by applicable codes, ordinances or conditions of approval for the Community. Eaves, steps and uncovered porches shall not be considered a part of the building; provided, however, that this provision shall not be construed to permit any portion of a building on a Lot to encroach onto another Lot.



Section 7.03. New Construction; No Temporary or Prefabricated Structures. All construction within the Community shall be new construction. No trailer, basement, tent, shack, garage, barn, outbuilding, storage container or temporary structure shall be used as a Residence on any Lot. All Residences, garages and outbuildings constructed in the Community shall be of high-quality design, construction, workmanship and materials; in particular, no structure may be of a type known as "prebuilt", "precut", "modular", "manufactured" or mobile home", regardless of its quality. This Section 7.03 shall not apply to the temporary sales and construction office used by Declarant during the development, construction and sale of Lots in the Community, as described in Section 7.12.

Section 7.04. Dwelling Size and Height

(a) Standard Lots: No Residence shall be permitted on any standard Lot if the interior ground floor area of the main structure, exclusive of patios, porches, decks, and garages is less than one thousand eight hundred (1,800) square feet. If a Residence has a second floor, the interior ground floor area of the main structure, exclusive of patios, porches, decks, and garages, shall not be less than one thousand (1,000) square feet, with a total interior square footage on the first and second floors, exclusive of patios, porches, decks, and garages, of not less than one thousand eight hundred (1,800) square feet. Garages shall not hold less than two (2) and no more than three (3) standard sized automobiles.

(b) The maximum height of a Residence, measured from the average finished grade of the Residence to the highest point of its roof, shall not exceed thirty-four (34) feet.

(c) The measurement of square footage shall be by outside measurement, and shall include any garage but exclude any basement, attic, and open or enclosed porches, patios and decks. For purposes of this Section 7.04, the term "second floor" means heated, cooled, or finished living or storage space constructed above any portion of any heated, cooled, or finished living or storage space on the ground floor of a Residence. All foundations and basements shall be engineered by a registered professional engineer.

Section 7.05. Building Plans, Materials and Colors. All plans, specifications, color selections and samples of exterior siding and/or masonry materials, along with roof material samples, for any Residence, building, outbuilding, addition or improvement must be submitted to the ACC for review and approval. The entire exterior finish of a Residence shall be stucco, brick, rock or natural stone, or other materials approved by the ACC. Exterior color selections shall blend into the surrounding landscape and terrain. Bright or highly visible colors will not be permitted while natural colors will be encouraged.

Section 7.06. Roofs. Roofs shall be constructed of architectural asphalt shingles or metal roofing rated not less than thirty (30) years. Permitted colors shall include only moderate hues approved by the ACC in its discretion.

Section 7.07. Windows. Windows shall be of a design and color complementary to the exterior of the Residence. Window frames of mill finished aluminum are not permitted.

Section 7.08. Driveways. Driveways shall be concrete unless otherwise approved by the ACC.

Section 7.09. Outbuildings. One outbuilding no greater than one hundred forty-four (14) square feet in size by outside measurement may be permitted on each Lot if its design, construction, materials and exterior finish are comparable to that of the Residence on the same Lot. All outbuildings are subject to ACC approval. No shipping containers shall be permitted on a Lot except during construction or remodeling of the Residence on the Lot.

Section 7.10. Antennas, Towers, Dishes, and Solar Panels No antenna, satellite or similar device for radio, television or other electronic transmission or reception shall be erected, installed or permitted to remain on any Lot, except that television and radio antennas and satellite dishes not in excess of twenty-four (24) inches in diameter attached to a Residence may project up to six (6) feet above the ground, so long as the antenna or dish is not visible from any street adjoining that Lot. No solar panels or other apparatus may be erected upon the roof of any structure within the Community without the prior written approval of the ACC.

Section 7.11. Air Conditioning/HVAC Units No permanent window mounted air conditioning or HV AC (refrigeration, evaporative or other) units are allowed. All HVAC or air conditioning units shall be ground mounted on a concrete pad or roof mounted on a rear roof elevation not visible from the street faced by the front elevation of the Residence, and so that the highest point of the unit is below the ridge line of the roof.

Section 7.12. Temporary Sales and Construction Office A temporary sales and construction office maintained by Declarant may be located within the Community during the development, construction and/or sale of Lots and the Community. Temporary parking in front of and adjacent to the office shall be allowed as long as the office is maintained in the Community. Notwithstanding anything to the contrary in this Declaration, Declarant may maintain the office until thirty (30) days after the completion of the last Residence on the last Lot within the Community, at which time Declarant will have sixty (60) days to remove the office and leave the site flat and clean so as to appear as a vacant building lot temporary sales signs, flags, etc. may be placed in the Community during the development, construction and sale of Lots as long as the office is maintained in the Community or there are development, construction or sales activities taking place.

Declarant may, at its option, maintain the office located in any filing of the Community for the entire duration of subsequent filings being developed, constructed and sold, or relocate the office to a location in any future filing(s). During the period of development, construction and sales, Declarant may also designate certain Lots to be used for sales offices, construction offices, storage yards and buildings.

Section 7.13. Landscaping. All front yard landscaping and any other landscaping visible from any street shall compliment the residential character of the Community. The landscaping plan must be submitted to the ACC for approval within two (2) months after the purchase of a new or non-landscaped Residence, or thirty (30) days before landscaping is to be installed, whichever is first. Landscaping shall be completed and ready for a walkthrough inspection by the ACC within two (2) months after ACC approval of the landscaping plan. In the event that weather will not permit the planting of plants, shrubs and grass within these time frames, the ACC may grant an extension of thirty (30) days after the planting season begins in the spring following ACC approval of the landscaping plan. The ACC shall determine, in its sole discretion, when the planting season has begun each year based on the weather conditions for that year. Unless otherwise provided, this Section 7.13 applies only to those areas of landscaping that are in the front and side yards, and to back yards that are visible from any street.

(a) Each Owner shall plant a minimum of one tree within the front yard setback area of their Lot as part of the landscaping of their Lot which shall be a minimum of fifteen (15) gallon size and approved individually by the ACC or of a type from a list of trees approved by the ACC. Xeriscaping is encouraged and is subject to the same approval by the ACC as required for other types of landscaping.

(b) Once landscaped, each Owner shall keep all landscaping on his or her Lot neatly trimmed, properly irrigated and cultivated, and free of trash, weeds and other unsightly materials at all times. Special care shall be taken to ensure proper surface drainage to eliminate casual water pockets and so as not to infringe on neighboring property, Lots or Common Areas.

Section 7.14. Irrigation Systems and Facilities. Each Owner shall be responsible for all costs of installing, operating, and maintaining any domestic water irrigation system or facilities used to deliver water on his or her Lot.

Section 7.15. Yards. No weeds, rubbish, debris or other such accumulations of any kind shall be placed or permitted to accumulate or remain on any Lot. All ornamentation in yards, such as, by way of example but not limitation, figurines, plastic flowers, colored lights, windmills and bird baths or feeders, shall either be screened from public view or approved by the ACC. No clotheslines, dog runs, or drying lines in yards shall be located on any Lot so they are visible

from a street. This Section 7.15 shall not apply to seasonal holiday decorations that are promptly removed after the holiday or to the display of the flag of the United States of America, which is addressed in Section 7.19.

Section 7.16. Restrictions on Storage Areas. Equipment, garbage cans, service yards, wood piles, brick piles and storage areas shall be adequately screened by plantings or construction approved by the ACC to conceal the same from view from neighboring Lots and streets.

Section 7.17. Fences; Planters and Hedges. No wall, fence, planter or hedge in excess of two and half (2 1/2) feet above ground level shall be allowed within any front yard setback, per the Grand Junction Zoning and Development Code. Front yard setbacks shall be defined according to the Grand Junction Zoning and Development Code requirements for front yard setbacks specified for the Community. All fences must be approved by the ACC prior to construction. Open-type fencing is required for any front yard fencing within the front yard setback areas. All fences must be chestnut brown vinyl, or, if approved by the ACC, a similar dark brown color if chestnut brown vinyl fencing is not available at the time of construction. Each Lot shall have side yard and back yard fences which shall be six (6) feet in height and shall have at least one (1) side yard gate and shall be completed by issuance of a certificate of occupancy for a residence located on a Lot. No fence on any Lot may be greater than six (6) feet in height without the approval of the ACC. The ACC may, from time to time, adopt written fencing standards, details and colors that differ from the standards described in this Section 7.17. Any Owner may acquire a copy of such standards upon request. The Owners of each Lot adjacent to a Lot boundary fence shall be responsible for fifty percent (50%) of the costs of construction of such fence, including all labor, materials and supplies. All fencing shall be required to obtain a Fence Permit from the City of Grand Junction.

Section 7.18. Restrictions Relating to Drainage Nothing shall be done or permitted on any Lot that would block, divert or channelize the natural flow of drainage water across any Lot from adjacent Lots, as established by the original Community grading, without specific approval from the ACC.

Section 7.19. Signs and Flags No sign, graphic or advertising device of any kind shall be displayed on any Lot except: (i) one sign advertising the property for sale or rent; (ii) signs used by the building contractor or lender for advertising during construction and/or sales of Lots in the Community; (iii) the American flag, displayed in accordance with 4 U.S.C. sections 4 to 10 and rules and regulations adopted by the Association and not contrary to law; (iv) a service flag not to exceed nine (9) inches by sixteen (16) inches, subject to rules and regulations adopted by the Association and not contrary to law; and (v) political signs in support of candidates or ballot issues limited to the period forty-five (45) days immediately preceding the election date and seven (7) days after the election date on which the candidates or issues will be voted upon. Any permitted sign may be no more than thirty-six (36) inches by forty-eight (48) inches (or smaller if required by applicable law). Signs used by Declarant for any purpose are not subject to the restrictions in this Section 7.19 or any other restrictions.

Section 7.20. Vehicle Parking; Storage and Repair.

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

Other Vehicles. Recreational vehicles, boats, campers, trailers, snowmobiles and vehicles used for business (other than passenger automobiles) may be stored on a Lot only if placed within a garage, placed in an Architectural Control Committee-approved outbuilding or screened storage facility, behind the front of the residential Building on the Lot.

Despite anything to the contrary in this Section 7.20, an occupant of a Lot who is a bona fide member of a volunteer fire department or who is employed by a primary provider of emergency firefighting, law enforcement, ambulance or emergency medical services is exempt from the requirements of this Section 7.20 if the vehicle is required to be available at designated periods as a condition of the occupant's employment, the vehicle has a gross vehicle rating of ten thousand (10,000) pounds or less, and the parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants of Lots to use any streets, alleys, driveways or guest parking areas in the Community.

Section 7.21. Animals. No animals, livestock, reptiles, poultry or insects of any kind, shall be raised, bred, kept or boarded in the community; provided, however, that the Owners of each Lot may keep fish, reptiles, dogs and cats that are bonafide household pets, as long as such pets are not kept for any commercial purpose and are not kept in such a number or in such a manner as to exceed the limits imposed by the City of Grand Junction, create a danger or nuisance, by excessive noise or otherwise, to any resident(s) of the Community. An Owner's right to keep household pets shall be coupled with the responsibility to pay any costs to the Association for any damages caused by such Owner's pet(s) to Common Areas. All animals shall be maintained on the Owner's property or on a leash. Owners shall be responsible for the cleanup of all waste from their animals. Habitually barking and/or vicious dogs are prohibited at the sole discretion of the Board of Directors.

Section 7.22. Site Lines on Corner Lots. No object or thing shall be placed or planted on any corner Lot that obstructs site lines at elevations between two (2) feet and six (6) feet above the top of the street curb within a triangular area formed by the junction of the street and the curb lines and the line connecting them at a point twenty-five (25) feet from the junction of such streets, curb line, or extension thereof.

Section 7.23. Residential Use. Lots shall be used for single family residential purposes only. No Lot may be used for commercial purposes, except for home occupations. For purposes of this Section 7.23, "home occupation" means an occupation conducted in accordance with City of Grand Junction ordinances for home occupations and that does not entail the employment of third persons on the premises. This does not include the delivery of goods or

services to customers upon a Lot, nor to the leasing of any Lot as described in Section 7.24. Any other commercial use shall be considered a nuisance within the meaning of Section 7.25. Declarant shall not be subject to the provisions of this Section 7.23.

Section 7.24. Leases. The term "lease" as used in this Declaration shall include any agreement for the leasing, rental or use of an improved Lot or any portion of it, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his or her Lot under the following conditions:

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

The provisions of (b) and (c) above shall be contained in each lease but shall also be deemed to be implied terms of each such lease, whether or not actually contained in the lease. A lease of an unimproved lot is not permitted. A Lot shall be deemed to be improved upon issuance of the certificate of occupancy for a Residence on the Lot.

Section 7.25. Nuisance and Hazardous Activities. No obnoxious or offensive activity shall be conducted on any Lot, nor shall any activity be permitted that becomes an annoyance or nuisance within the Community. No light shall be permitted from any Lot that is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent Lot or properly, or Common Areas. No sound shall be emitted from any Lot that is unreasonably loud or annoying and no odor shall be permitted from any Lot that is noxious or unreasonably offensive to others, as determined by the Board in its sole discretion. No activities shall be conducted in the Community or within the improvements constructed on or within the Community that are or might be unreasonably hazardous to any person or property. No firearms, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged in the Community. In no event shall activities of Declarant that are reasonably necessary for the development and construction of the Community be considered a nuisance or hazard under this Section 7.25.

Section 7.26. Hazardous Drainage. Release of contaminants or hazardous materials, as defined in CERCLA, RCRA, FIFRA, the Toxic Substances Control Act and any other applicable federal and state environmental laws, into the Community is prohibited.

Section 7.27. Lot Maintenance. Each Lot and the improvements thereon shall be properly maintained by the Owner of such Lot. In the event any Owner fails to maintain their Lot(s) in accordance with this Declaration, the Association may hire out such maintenance as is

necessary to bring such Lot(s) into compliance with this Declaration and may assess the Owner of such Lot(s) for those costs, as provided in this Declaration.

Section 7.28. Utilities and Easements. Underground electrical, natural gas, telephone, cable television and irrigation shall be available to all Lots. The utility companies furnishing these services shall have the easements shown on the Plat. No permanent structure shall be erected on any such easement. Neither Declarant nor the utility company or any entity using these easements shall be held liable for any damage done by any of them or their assigns, agents or employees to shrubbery, trees, flowers or improvements of an Owner located on any land subject to an easement. No overhead services shall be allowed to service any Lot within the Community.

Section 7.29. Resubdivision of Lots. The resubdivision of any Lot within the Community is prohibited.

## ARTICLE 8 **ARCHITECTURAL CONTROL COMMITTEE**

Section 8.01. Architectural Control Approval. No building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained within the Community (including the Common Areas), nor shall any exterior addition to or change or alteration (including without limitation painting, permanent or long-term decorations, landscaping, irrigation systems, fences and trash receptacles) be made until plans and specifications showing the nature, kind, shape, height, materials, location and other relevant information of the same have been submitted to and approved in writing by the ACC as being in harmony with external design and location in relation to surrounding structures, topography and other matters specified in this Article 8; provided, however, Declarant shall not be required to attain ACC approval, so long as Declarant in fact complies with the construction and design guidelines in Article 7.

Section 8.02. Procedures. The ACC shall approve or disapprove all requests for architectural control approval within thirty (30) calendar days after the submission of two (2) complete copies of all plans, specifications and other materials that the ACC may require in conjunction with the application. The thirty (30) day approval period shall commence on the first day of the month following submission. If the ACC fails to approve or disapprove an application in writing within the thirty (30) day period, the application will be deemed to have been approved if it otherwise complies with the construction and design guidelines in Article 7. The ACC shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to structures, other improvements and property, within the Community, conform to and harmonize with the existing surroundings, Residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the ACC may require that the applicant(s) pay the ACC a processing fee for the actual expenses incurred by the ACC in the review and approval process. Such amounts, if any, may be levied as part of the Regular Assessment against the Lot for which the request for ACC

approval was made and, as such, shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection thereof, as more fully provided in this Declaration. Notwithstanding the foregoing, only the Association shall have the right to materially alter or modify the original fencing, landscaping or grading installed by Declarant within the Common Areas; provided, however, that the foregoing prohibition shall not prevent the repair and maintenance of the same.

Section 8.03. Vote. A majority vote of the ACC is required to approve a request for architectural approval pursuant to this Article 8.

Section 8.01. Appeals. An Owner has the right to appeal any decision made by the ACC. All appeals shall be submitted in writing to the Board of Directors. The appeal will then be reviewed, and the Owner will receive a written response within fifteen (15) days. The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article 8 or Article 7, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof. Any applicant for a variance is obligated, where required by the City of Grand Junction, to receive approval from the City as well as the Board.

Section 8.02. Records. The ACC shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 8.03. Variance. The ACC may grant reasonable variances or adjustments from any condition or restriction imposed by Article 7 in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in Article 7. Variances or adjustments shall be granted only when they shall not be materially detrimental or injurious to the other Lots or the Community or the general intent and purpose of this Declaration. The grant or denial of a variance request shall not affect in any way any of the terms and provisions of this Declaration covered by the variance and shall not serve as a basis for subsequent variances with respect to any other request. The grant of any variance shall not affect in any way the Owner's obligation to comply with the City of Grand Junction Zoning and Development Code and other applicable governmental laws or regulations.

Section 8.04. Approval or Consent not a Waiver. The approval or consent of the ACC to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC as to any other application submitted for approval or consent under this Article 8.

Section 8.05. Time of Construction. Approved projects must be completed within twelve (12) months after issuance of a building permit or within twelve (12) months after



approval by the ACC if no building permit is required. If the work is not completed within the prescribed time, the ACC may rescind its approval, and re-submission will be required. The ACC may grant an extension for good cause. This Section 8.05 shall not apply to Declarant.

**Section 8.06.** Composition of the ACC. The ACC shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until the earlier to occur of sixty (60) days after the Conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant, two (2) years after the last Conveyance of a Lot by Declarant in the ordinary course of business, or two (2) years after any right to add new Lots was last exercised, Declarant shall appoint the ACC. The power of the Declarant to "appoint," as provided in this Section 8.06, shall include without limitation the power to: initially constitute the membership of the ACC, appoint member(s) to the ACC upon the occurrence of any vacancy, and for whatever reason to remove any member of the ACC, with or without cause, at any time, and to appoint a successor; and each such appointment may be made for such term(s) of office, subject to the power of removal stated in this Section 8.06, as may be set from time to time in the discretion of Declarant.

**Section 8.07.** No Liability. None of Declarant, the Association, or the ACC or its members shall be liable in damages to anyone submitting plans or specifications for approval under this Declaration arising out of or in connection with any action, failure to act, approval, disapproval or failure to approve or disapprove any matter within its jurisdiction under this Declaration. Any Owner submitting or causing to be submitted any plans or specifications agrees and covenants on behalf of such Owner and such Owner's heirs, successors, legal representatives and assigns that they will not bring any such action or suit at law or in equity against Declarant, the Association, the ACC, or any of the members of those entities. Notwithstanding any other provisions in this Section 8.07, decisions concerning the approval or denial of an Owner's application for architectural or landscaping changes shall not be made arbitrarily or capriciously.

**Section 8.08.** Rules and Regulations. The ACC may, from time to time in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of Article 8.

**Section 8.09.** Review Fee and Address. Any plans and specifications shall be submitted in writing for approval together with a submittal fee of \$100.00, or such other amount as may be determined by the Board from time to time. Any resubmittal shall be assessed a fee of \$100.00 for each resubmittal, or such other amount as may be determined by the Board from time to time. The address for the ACC shall be the principal place of business of the Association or such other place as the Board of Directors may designate. Such address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the ACC shall be kept.

**Section 8.10.** Inspection. During initial construction, remodeling, repair or other work on a Lot or to a Residence requiring ACC approval, any member or agent of the ACC may

from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any Lot or Residence within the Community to determine whether the Residence or Lot's improvement complies with the provisions of this Declaration.

## **ARTICLE 9**

### **INSURANCE**

Section 9.01. Insurance. The Association shall obtain and maintain insurance as required by CCIOA and this Declaration.

Section 9.02. Type of Insurance. Commencing not later than the time of the first Conveyance of a Lot to an Owner other than Declarant, the Association shall obtain a master insurance policy insuring against damage to the Common Areas. The master insurance policy insuring the Common Areas shall be for broad form covered causes of loss, shall include the Owners as additional named insureds, and shall include (or the Association shall obtain separately) commercial general liability insurance with single limited coverage of not less than \$1,000,000.00, with not less than \$500,000.00 medical payments coverage. In addition, if reasonably available, the Association shall maintain directors' and officers' liability insurance. The Association, as attorney-in-fact, shall have the authority to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

Section 9.03. Assessment of Members. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that multiple properties are 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.

Section 9.04. Waiver of Subrogation. The Association and the Owners each waive any and all rights of recovery against the other, their officers, Members, agents and employees, occurring on or arising out of the use and occupancy of the Community to the extent such loss or damage is covered or indemnified by proceeds received from insurance carried by the other party, or for which such party is otherwise reimbursed. Each of the parties shall, upon obtaining the insurance required under this Declaration, notify the insurance carrier that the foregoing waiver of subrogation is contained in this covenant, and, to the extent available, shall require the insurance carrier to include an appropriate Waiver of Subrogation Provision in the policy.

Section 9.05. Fidelity Bond Insurance. If any Owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, a fidelity bond insurance in an aggregate amount equal to not less than two (2) months of current assessments, plus reserve calculated from the then-current budget of the Association.

Section 9.06. Fidelity Bond Premiums. Premiums for bonds required of the Association under this Article 9 are Common Expenses of the Association.

Section 9.07. Additional Insurance. The Association may carry any other insurance it considers appropriate to protect the Association or the members, including insurance on property it is not obligated to insure.

Section 9.01. Insurance to be Maintained by Owners. Unless otherwise expressly provided in this Declaration, an insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the improvements thereon, as well as on the furnishings and other items of personal property belonging to an Owner, shall be the responsibility of the Owner of such Lot.

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

Section 10.01. Statement of Interest. Declarant hereby reserves to itself and its successors and assigns the Development Rights set forth herein, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration and ending on the date of termination of such rights established under Section 10.07 below. It is expressly understood that Declarant shall not be obligated to exercise any of these Development Rights, and that no consent shall be required from any Owner, Mortgagee, or the Association for the effective exercise of any of the Development Rights. Declarant reserves the right to create up to eighty (80) single family residential lots in one or more filings of the Community. The Development Rights hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the Development Rights reserved by and to Declarant in this Article 10 and elsewhere in this Declaration, even though no specific reference to such rights appears in the conveying instruments.

Section 10.02. Construction of Improvements on the Common Areas. The Declarant reserves the right, but not the obligation, to construct additional improvements on the Common Areas at any time and from time to time for the improvement and enhancement thereof for the benefit of the Association or the Owners. The right to complete improvements indicated on the Plat or this Declaration may be amended from time to time. The right to construct and complete improvements required by the terms of any development improvements agreement with applicable governmental entity may be amended from time to time. The Declarant shall have the right to create, grant and/or use and enjoy additional nonexclusive easements, and to relocate existing platted or other easements, upon or across any portion of the Community (including Lots and Common Areas), as may be reasonably required for the construction by Declarant of improvements to the Common Areas or the effective exercise by Declarant of any of the other Development Rights described in this Article 10.

Section 10.03. Sales, Marketing and Management. The Declarant shall have the right to construct, locate or operate, and to maintain upon, and to remove from any part of the Community, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvements, the management of the development, and/or the promotion, marketing or sale of Lots, the following:

- (a) A sales office, management office and/or construction office, and structure containing or relating to the same, including without limitation mobile home, office trailer and construction trailer. Such office, facility and structure, to the extent it is not situated on a Lot or is removable therefrom, is hereby declared to be personal property of the Declarant and shall in any case be removable by Declarant or their successors or assigns upon the Declarant or Declarant's successors or assigns ceasing to be a Lot Owner;
- (b) Signs identifying, advertising and marketing the Community and the Lots therein or related to development or construction thereon;
- (c) Model Residences constructed or to be constructed on Lots;
- (d) Parking areas and facilities and lighting necessary or desirable in the marketing of the Community and the Lots; and
- (e) Employees, equipment, vehicles and marketing and construction material.

Section 10.04. Declarant's Control of Association. Declarant shall have the right to appoint or remove any Board member or officer of the Association as more specifically set forth in Section 2.06 above consistent with the Act.

Section 10.05. Right of Further Development. Declarant reserves the right, but shall be obligated, to expand and further develop the Community during the Development Period without the approval of the Owners or any other parties to include additional land, additional Lots, Common Areas, and one or more additional buildings located upon all or any part of the Expansion Property; provided, however, that the total number of Lots in the Community, as expanded, shall not exceed the number of Lots That May Be Created. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Community and to modify the Owner's interests with respect to its proportionate share of Common Expenses and votes in the affairs of the Association. Any expansion hereunder shall comply with C.R.S. § 38-33.3-209 and 210.

Section 10.06. Procedure for Expansion. Expansion under this Article 10 may be accomplished by the filing for record by Declarant with the Clerk, no later than the expiration of the Development Period, an amendment or amendments to the Declaration containing a legal description of the land area to be added to the Community (a "Supplemental Declaration"), together with any supplemental plats or maps which may be required (a "Supplemental Plat or Map"). Any such Supplemental Declaration and Supplemental Plat or Map shall also contain a

listing of the number of Lots to be contained in the expanded portion of the Community and shall assign an identifying number to each new Lot thereby created, shall reallocate each Owner's interests with respect to its proportionate share of Common Expenses and votes in the affairs of the Association, and, except as otherwise provided herein, designate the Lots to which any limited common element or area is allocated to the extent required by C.R.S. § 38-33.3-208. The expansion may be accomplished in "phases" by successive amendments in any order or progression, and Declarant makes no representation as to which parts or portions of the Expansion Property may be added to the Community in the future, if any.

Section 10.07. Effect of Expansion. In the event of expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Community as so expanded (e.g., "Community" shall mean the real property described in Recital A, above, plus any additional real property added by any Supplemental Declaration and Supplemental Plat or Map). Every Owner of a Lot in the Community shall, by virtue of such ownership and upon recordation of the Supplemental Declaration and Supplemental Plat or Map, be a member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligation as any other Association member. The recording with the Mesa County Clerk and Recorder of any Supplemental Declaration and Supplemental Plat or Map incident to any expansion shall operate automatically to grant, transfer and convey to all of the Owners of the Lots, located within the Community and the part of the Expansion Property added thereby, their respective, appurtenant, undivided rights, titles, interests, privileges, duties and obligations in and to both the existing Common Areas and the new Common Areas, if any, added to the Community as a result of such expansion; provided, however, Assessments for Lots within the expansion area shall commence as set forth in this Declaration, but no part of the Expansion Property shall be subject to Assessments or any provision of this Declaration until the addition of that part is completed in accordance with this article.

(ii) Upon recording of any Supplemental Declaration and Supplemental Plat or Map, the additional Lots and Common Areas shall be subject to the provisions of this Declaration.

(iii) Until the expansion of the Community is accomplished by recording any Supplemental Declaration and Supplemental Plat or Map, the Expansion Property and any Improvements constructed thereon shall not be subject to this Declaration in any way whatsoever, including, without limitation, consideration for the purpose of apportioning Assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in this Declaration or otherwise shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's, or its successors' or assigns' sole and complete right, title and interest to the Expansion Property and any Improvements constructed thereon. The Declarant alone shall be liable for all expenses of the

Expansion Property unless and until annexed hereunder and shall be entitled to any income and proceeds therefrom. The Declarant's right to further development may be exercised at different times and as to different portions of the Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions, the Declarant is not required to exercise any development rights to any and all portions of the remaining Expansion Property. Any portion of the Expansion Property may be designed as Common Areas or limited common elements as shown by the plat or map that has been or will be recorded regarding that portion.

Section 10.08. Transfer of Declarant's Reserved Rights. Any one or more rights created or reserved for the benefit of Declarant under this Article 10 or elsewhere in this Declaration or in any supplemental Declaration may be transferred to any Person by an instrument describing the right or rights transferred and recorded in the Mesa County records. Such instrument shall be executed by the Declarant and the transferee. The provisions of section 38-33.3-304 of the Act shall apply to any transfer of the Declarant's reserved rights.

Section 10.09. Termination and Extension of Declarant's Reserved Rights. With the exception of Declarant's right to appoint or remove Board members and officers of the Association, the rights reserved to Declarant in this Article 10 shall automatically terminate and expire upon the first to occur of (i) the date which is twenty (20) years after the recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by recorded instrument. The Association is authorized and empowered to extend the time period for Declarant's exercise of the Development Rights, or reinstate a lapsed Development Right, without requiring Lot Owner or Mortgagee approval thereof. The extension or renewal of a Development Right shall be made as an amendment to the Declaration or Plat, as the circumstances require, and shall be executed by Declarant and the Association.

Section 10.10. Owner Acceptance and Waiver of Rights Regarding Declarant's Reserved Rights. Each Owner, by his/her acceptance of a deed to a Lot, acknowledges that the Owner has read and understands the Declarant's reserved Development Rights as set forth in this Article 10 or elsewhere in this Declaration, that the Owner accepts, approves and understands the Declarant's reserved Development Rights and waives and releases any rights the Owner may have to object to or to interfere with the implementation or the exercise of the Development Rights reserved by the Declarant.

## ARTICLE 11 **GENERAL PROVISIONS**

Section 11.01. Easements. Easements for the installation and maintenance of utilities and irrigation, drainage, detention and other water facilities are reserved as shown on the Plat. Within these easements no improvement, structure, planting or other material (excluding fences

capable of being readily removed for the purposes of the easement) shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of such utilities or facilities, or that may change the direction of flow of drainage channels in the easements. Declarant and the Association shall have the right (but assume no obligation) to enter upon the Community to correct any flow of water and to establish and reestablish drainage channels.

Section 11.02. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Community and Lots, binding Declarant and all persons and entities claiming by, through or under it for a period of twenty (20) years from the date of recording of this Declaration in the real property records of Mesa County, Colorado, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided in Section 11.05.

Section 11.03. Termination and Amendment.

(a) Subject to the provisions of C.R.S. § 38-33.3-217(1), (5), (6) and (7), all or any portion of this Declaration may be supplemented, changed or canceled in whole or in part at any time by the vote or agreement of Members entitled to cast sixty-seven percent (67%) of the votes. Such agreement may be in any number of counterparts. This Declaration may also be amended at any time and for any purpose and in such manner as is provided in the Act. Such amendment shall be effective when duly recorded in the real property records of Mesa County, Colorado.

(b) This Declaration and/or the Plat may be amended by Declarant at any time and for any purpose prior to the conveyance of the first Lot to an Owner. Subsequent to the conveyance of the first Lot to an Owner, the Declarant may amend the Declaration or the Plat: (i) to correct any clerical, typographical or technical errors; (ii) to comply with the requirements, standards or guidelines of recognized secondary markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans' Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association; (iii) to exercise any of the reserved Development Rights as set forth in Article 10 above; or (iv) to effect the Declarant's intent as expressed in the Declaration or the Plat.

Section 11.04. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 11.05. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void. Any managing agent, employee, independent contractor

or other person acting on behalf of the Association shall be subject to CCIOA to the same extent as the Association itself would be under the same circumstances.

Section 11.06. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions, which shall remain in full force and effect. To the extent feasible, any non-complying provision and the remainder of this Declaration shall be reformed to comply with applicable law and to preserve the intent of this Declaration, including the invalidated provision.

Section 11.07. Waiver. The failure of Declarant, the Association or any Owner to enforce any right under this Declaration upon any occasion shall not be deemed a waiver of such right on any subsequent occasion(s). The waiver, either express or implied, by Declarant, the Association or any Owner of any of the rights, terms or conditions in this Declaration shall not be deemed as or constitute a waiver of any other rights, terms or conditions in this Declaration. Any waiver, in order to be valid and effective, must be in writing.

Section 11.08. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the real property records of Mesa County, Colorado by which that Owner took title and to the street address of that Lot, if any.

Section 11.09. Section Headings. The article and section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

Section 11.10. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of Declarant, each Owner, and each and all their heirs, personal representatives, successors in interest and assigns.

Section 11.11. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Community to the general public or for any public use or purpose.

Section 11.12. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained in this Declaration are separate and distinct from any zoning, building or other law, ordinance, rule or regulation of the City of Grand Junction or of any governmental authority having jurisdiction over the Community that now or in the future may contain different requirements from or in addition to those contained in this Declaration or that may prohibit uses permitted in it or permit uses prohibited in it. In the event of any conflict between the provisions of this Declaration and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then, to the extent possible, the Owner must comply with these covenants,



conditions and restrictions unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance with this Declaration would result in such a violation, the ACC shall waive any such covenant, condition or restriction to the extent it results in such a violation, and in connection with such waiver, the ACC may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

Signature and acknowledgment on following page

DATED as of the day and year first set forth above.

FIVE STAR LAND HOLDINGS, INC.

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Karie Padilla, President

STATE OF COLORADO       )  
  ) ss.  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025 by Karie Padilla as President of Five Star Land Holdings, Inc., a Colorado Corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

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Notary Public