

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
STONE MOUNTAIN ESTATES SUBDIVISION**

THIS DECLARATION is made and entered into this 9<sup>th</sup> day of February, 2001, by **STONE MOUNTAIN HOLDINGS, LLC**, hereinafter referred to as the "Undersigned."

**RECITALS**

A. The Undersigned is the owner of certain real property situated in Mesa County, Colorado, known as Stone Mountain Estates Subdivision, according to the plat thereof recorded in the real property records of Mesa County, Colorado, including the easements and licenses appurtenant to, or included in the property as shown on the plat.

B. The Undersigned desires to create a planned community upon the real property described on Exhibit "A" attached hereto, as platted at Book 18, Page 62<sup>103</sup>, Mesa County Records, and to subject and place upon the property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act ("Common Interest Act") for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvements, sale and ownership of said property.

NOW, THEREFORE, the Undersigned hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Agencies" shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Veterans Administration (VA), and the Federal Housing Administration (FHA), or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

Section 2. "Architectural Control Committee" shall mean and refer to the committee appointed by Declarant or by the Board of Directors of the Association, as more fully provided in Article V hereof.

Section 3. "Association" shall mean and refer to Stone Mountain Estates Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and officers. The fiscal year of the Association shall end on December 31 of each calendar year.

Section 4. "Declarant" shall mean and refer to Stone Mountain Holdings, LLC, its successors and assigns, if such successors or assigns should acquire more than one unimproved Lot from the Declarant for the purpose of development and resale, and said person or entity shall first be designated by Stone Mountain Holdings, LLC, as a Declarant for said purposes by a written instrument duly recorded in the real property records of Mesa County, Colorado.

Section 5. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.

Section 6. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering a Lot recorded in the records of the office of the Clerk and Recorder of the County of Mesa, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 7. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 8. "Lot" shall mean and refer to any separate numbered lot or plot of land shown upon any recorded subdivision or condominium map of the Property or any portion thereof, as the same may be amended from time to time, together with all appurtenances and improvements now or hereafter thereon, with the exception of the Common Area, as defined herein.

Section 9. "Dwelling Unit" shall mean and refer to any residential improvement constructed within Stone Mountain Estates Subdivision, including but not limited to, single family residences, condominium units, town house units or patio homes.

Section 10. "Common Area" shall mean the entryways to the Property, and all property owned by the Association for the Common use and enjoyment of the Members, including a pipeline irrigation system, an RV storage area and all property designated as Open Space on the subdivision plat(s).

Section 11. "Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder and Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Property" shall mean and refer to that certain real property described in the Recitals of this Declaration, together with such additions thereto, if any, as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Special Declarant Rights" shall mean and refer to the development and other rights expressly reserved for the benefit of Declarant in accordance with the terms and conditions of this Declaration.

## **ARTICLE II PROPERTY RIGHTS IN THE COMMON AREA**

Section 1. Owners' Right of Enjoyment. Subject to the provisions of Section 2 of this Article, every Owner shall have a nonexclusive right to enjoy and use the facilities, if any, within the Common Area and such right shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Owners' Right. The right of enjoyment created hereby shall be subject to the following:

- a. The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply; and
- b. The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and
- c. The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on his Lot.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS: THE ASSOCIATION**

Section 1. Membership. Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from

ownership of any Lot. Each Lot shall be entitled to one vote and the vote for such Lot shall be exercised by the Owner or Owners as they determine.

Section 2. Directors of the Association. The affairs of this Association shall be managed by a board of three (3) directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 3 below, the Board shall be managed by three (3) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

Section 3. Management of the Association. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of 75% of the Lots 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 may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of 25% of the Lots to Owners other than Declarant, at least one member and not less than 25% of the members of the Board will be elected by Owners other than Declarant. Not later than sixty (60) days after the conveyance of 50% of the Lots to Owners other than Declarant, not less than 33-1/3% of the members of the Board will be elected by Owners other than Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners (including Declarant) shall elect a Board of three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon election. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 303(9) of the Common Interest Act.

Section 4. Officers of the Association. The officers of this Association shall be as set forth in the Bylaws of the Association.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, and (3) reconstruction assessments, such assessments to be

established and collected as hereinafter provided. The annual, special and reconstruction assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Mesa, 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 attorney's fees, shall also be the personal obligation of the 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 from them. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property and, to the extent not performed by any applicable governmental entity, for the maintenance and insurance of the Common Area, including but not limited to, the entryways (signage, walls and landscaping) and the irrigation water system.

Section 3. Maximum Annual Assessment.

a. Until commencement of the second annual assessment period, the maximum annual assessment shall be One Hundred Fifty Dollars (\$150.00) per Lot.

b. Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment against each Lot shall be increased effective each Association fiscal year by the greater of: (i) ten percent (10%); or (ii) in conformance with the rise, if any, of the Consumer Price Index published by the U.S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for All Urban Consumers (1967 - 100), for the one (1) year period ending on the last day of October of the prior year. The aforesaid annual increase in the maximum annual assessment shall occur automatically upon the commencement of each Association fiscal year without the necessity of any action being taken with respect thereto by the Association.

In the event the aforesaid Consumer Price Index is not published, for whatever reason, then if the increase in the maximum annual assessment is to be computed by reference to the Consumer Price Index, as provided herein, such calculation shall be made by using a substantially comparable index designated by the Board of Directors of the Association.

c. Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment may be increased by a vote of the Members over the amount established by the applications of the provisions of Section 3(b) above for the next succeeding Association fiscal year and at the end of that year, for each succeeding Association fiscal year, provided that any such increase shall have the assent of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting setting forth the purpose therefor.

d. The Board of Directors of the Association may, at any time and from time to time, after consideration of the projected maintenance costs and the other financial needs of the Association, fix the actual assessment against each Lot at an amount less than the maximum assessment for any Association fiscal year.

e. Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget shall be ratified, whether or not a quorum of members is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

f. The limitations contained in this Section 3 shall not apply to any change in the maximum, actual and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

g. The Association shall maintain an adequate reserve fund out of the annual assessments for the repair and replacement of those elements of the Common Area that must be repaired or replaced on a periodic basis.

**Section 4. Special Assessments.** In addition to the annual and reconstruction assessments authorized in this Article IV, the Association may levy, in the Association fiscal year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, or for the funding of any operating deficit incurred by the Association. Any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose and shall be set equally against each Lot. The Association shall have the right to levy a Special Assessment against any lot owner who fails to maintain his fence as required under these covenants. The Special Assessment shall be in the amount of the actual cost of such maintenance performed by the Association for the benefit of the defaulting lot owner.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action requiring a vote of the Members authorized under Sections 3 or 4 of this Article shall be sent to all Members not less than 10 days or more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Reconstruction Assessments. In addition to the annual and special assessments authorized in this Article IV, the Association may levy a reconstruction assessment for the purpose of repair or reconstruction of damaged or destroyed improvements. All such reconstruction assessments shall be equal to the net amount of the cost of repair or reconstruction of such improvements and shall be calculated by subtracting from the total cost of repair or reconstruction the sum of the insurance proceeds awarded for the damage or destruction thereof, if any, and shall be set equally against each Lot. Such reconstruction assessments shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice hereof; provided, however, that, in appropriate circumstances, the Association may proceed directly against any Owner pursuant to Article VIII, Section 3 hereof for any such amount.

Section 7. Rate of Assessment. Annual and special assessments shall be fixed at a uniform rate for all Lots and shall be allocated to each Lot on the basis of a fractional share per Lot, the numerator of which fraction shall be one and the denominator of which shall be the number of Lots contained within the Property, and shall be in an amount sufficient to meet the expected needs of the Association.

Section 8. Date of Commencement of Annual Assessments. The initial annual assessment may commence on the first day of the month following conveyance of the first Lot upon which a residential dwelling has been constructed and a Certificate of Occupancy issued to an Owner other than Declarant, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments shall be made due and payable with such frequency and on such dates as determined by the Board, but no more frequently than monthly, provided that the first annual assessment shall be adjusted according to the number of months in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a *pro rata* share of the last installment due.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate in compliance with §38-33.3-315, as may be set from time to time by the Association, C.R.S., and the Association may also assess a monthly late charge thereon. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien

against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 10. Working Capital Fund. The Association or Declarant shall require the first Owner of any Lot to make a nonrefundable payment to the Association in an amount of One Hundred Dollars (\$100.00), all of which sums shall be held by the Association and maintained in a segregated account for the use and benefit of the Association, including but not limited to the use to meet unforeseen expenses. Such payment shall not be deemed to be prepayment of any assessment but shall be deemed a payment to the working capital fund and shall not relieve an Owner from making the regular payment of assessments as the same become due. The payment to the working capital fund shall be due on the date of the commencement of the Annual Assessment. Upon the transfer of his Lot, an Owner shall be entitled to a credit from his transferee (but not from the Association) for the aforesaid payment to working capital fund.

Section 11. Lien for Assessments.

a. Under the Common Interest Act, the Association has a statutory lien on a Lot for any assessments levied against that Lot and for fines imposed against its Owner from the time each assessment or fine becomes due. In addition, fees, charges, late charges, attorneys' fees, fines and interest charged pursuant to this Declaration or the Common Interest Act are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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; (ii) a lien of a First Mortgage which was recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) 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 which would have become due, in the absence of any acceleration, during the six 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 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 recordation of any claim of lien or assessment is required, however, a claim 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 claim shall be assessed against the Owner's Lot as a default assessment.



## ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

Section 1. Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until Declarant has conveyed all Lots to Owners other than the Declarant, or until three (3) years after the date of recording of this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado, whichever occurs earliest, Declarant shall appoint the Architectural Control Committee. A majority of the Committee may, from time to time, designate a representative to act for it. Reasonable effort shall be made to have a licensed architect as a Committee member. The power of the Declarant to "appoint", as provided herein, shall include without limitation the power to: initially constitute the membership of the Architectural Control Committee, appoint member(s) to the Architectural Control Committee upon the occurrence of any vacancy therein, for whatever reason remove any member of the Architectural Control Committee, with or without cause, at any time, and appoint the successor thereof, and each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Declarant. All improvements within the Property constructed by Declarant during the period in which it appoints the Architectural Control Committee shall be deemed approved by the Committee without the issuance of any writing evidencing such approval.

Section 2. Review by Committee. No structure or any attachment to an existing structure, any building, fences, walls, canopies, awnings, roofs, exterior lighting facilities, athletic facility, or other similar improvements or attachments, shall be constructed, erected, placed or installed upon the Property and no alteration of the material or appearance (including color) of the exterior of a residence or other structure shall be made, and no change in the final grade of any Lot shall be performed, unless copies of plans and specifications therefor (said plans and specification to show exterior design, height, colors, materials, location of the structure or addition to the structure, as well as such other materials and information as may be required by the Committee) shall have been first submitted to and approved in writing by the Architectural Control Committee. The plans and specifications so submitted shall comply in all respects with the applicable building and zoning regulations of the City of Fruita, County of Mesa. The Architectural Control Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to residences, other structures, and property, within the Property, 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 Architectural Control Committee may require that the applicant(s) pay the Committee a processing fee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, may be levied as part of the common expense assessment against the Lot for which the request for Architectural Control Committee 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, no Owner shall have the right to materially alter or modify the original fencing, landscaping or grading installed by Declarant within the Common Area; provided, however, that the foregoing prohibition shall not

prevent the repair and maintenance of the same so long as the repair or maintenance restores such items to their original condition. All dwellings shall have a minimum of 1,400 square feet of livable space and all structures shall have an exterior finish of natural or synthetic stucco with a natural color.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all requests for architectural control approval within thirty (30) days after the complete submission of copies of all plans, specifications, and other materials which the Committee may require in conjunction therewith. Complete submission shall be deemed to have occurred upon written notice by the Architectural Control Committee that it has received all the required materials. In the event that the Architectural Control Committee fails to approve or disapprove any request within thirty (30) days after the complete submission of all plans, specifications, materials and other information with respect thereto, or the Architectural Control Committee does not exist, approval shall not be required and this Article shall be deemed to have been fully complied with.

Section 4. Vote and Appeal. A majority vote of the Architectural Control Committee is required to approve a request for architectural approval pursuant to this Article. An Owner may appeal the decision of the Architectural Control Committee to the Board of Directors if the Board is composed of different members than the Architectural Control Committee, and, in such event, the decision of the Board shall be final.

Section 5. Records. The Architectural Control Committee 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 6. Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 7. Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Article or Article IX hereof. 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.

Section 8. Waivers. The approval or consent of the Architectural Control Committee 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 Committee as to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

## ARTICLE VI INSURANCE

Section 1. Insurance on Common Area. To the extent not maintained by the applicable governmental entity, the Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article VI, the Association may also consider in determining the types and amount of insurance it needs to obtain the then existing requirements of any of the Agencies.

a. A policy of property insurance covering all insurable improvements, if any, located on the Common Area, except for land, foundations, excavations and other matters normally excluded from coverage, in an amount no less than the full insurable replacement cost of the Common Area less deductibles. Further, said policy shall contain a "Replacement Cost Endorsement" and an "Agreed Amount Endorsement." Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

b. A comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than \$1,000,000.00 covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence.

c. A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than three (3) months aggregate assessments on all Lots, plus such reserve funds. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Association as an obligee; and

(2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

d. If the Common Area, or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Area in an amount at least equal to the less of:

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

(2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

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

Section 2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The Association's policies shall contain a standard noncontributory first Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of a First Mortgage. The Association or any Owner, as applicable, shall furnish a certified copy or duplicate original of the policy, or renewal thereof, which is in the name of such Owner or the Association, with proof of premium payment and a certificate identifying the interest of the Owner in question or the Association, to any party in interest, including First Mortgagees, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of any Owner where such Owner is not under the control of the Association.

Section 3. Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount greater than the greater of \$1,000 or 1% of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible shall be borne by the Association. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any annual assessment; provided, however, that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

Section 4. Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interest may appear.

Section 5. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any annual assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 6. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to transact business within the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 7. Insurance to be Maintained by Owners. Insurance coverage on the structures located upon a Lot, as well as the furnishings and other items of personal property belonging to an Owner shall be the responsibility of such Owner. Owners shall also be responsible for obtaining such policies of public liability insurance, and title insurance related to any sale of a Lot other than the purchase by the Initial Owner from the Declarant.

Section 8. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

## ARTICLE VII DAMAGE OR DESTRUCTION OF COMMON AREA

In the event of damage or destruction to any improvement installed by the Association within the Common Area due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association may levy a reconstruction assessment in the aggregate amount of such deficiency pursuant to Article IV, Section 6 hereof and shall proceed to make such repairs or reconstruction, unless:

- a. the planned community is terminated;
- b. repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- c. eighty percent (80%) of the Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild; or
- d. prior to the conveyance of any Lot to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and First Mortgagees of their respective Lots, if any. The reconstruction assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements thereon, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration.

## ARTICLE VIII EXTERIOR MAINTENANCE

Section 1. General. Except as otherwise provided herein, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed thereon, and the interior of any fence on the boundary line of a Common Area and a Lot shall be the responsibility of the Owner(s) thereof. It shall be the duty and obligation of each Owner to landscape the front yard of his or her Lot within sixty (60) days from issuance of a Certificate of Occupancy and the backyard of his or her Lot within one (1) year from issuance of a Certificate of Occupancy. The time limits contained herein may be extended in writing by the Architectural Control Committee pursuant to the provisions of Article V hereof.

Section 2. Maintenance of Common Area. To the extent not performed by the applicable governmental entity or Owner, the Association shall be responsible for the landscaping and maintenance of the Common Area, including but not limited to repair of signage, fencing, stone columns, irrigation equipment, lighting and electrical fixtures and equipment, and plantings. No Owner shall, in whole or in part, change the landscaping, grade or fencing or in any way change the retaining wall on any portion of the Common Area. The irrigation equipment shall include, but is not limited to, the three (3) irrigation syphons providing irrigation water to adjacent properties.

Section 3. Owner's Negligence. Notwithstanding anything to the contrary contained in this Article VIII, in the event that the need for maintenance or repair of the Common Area is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article IV of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

## ARTICLE IX RESTRICTIONS

Section 1. General Plan. It is the intention of the Undersigned to establish and impose a general plan for the improvement, development, use and occupancy of the Property, in order to enhance the value, desirability, and attractiveness of the Property and to promote the sale thereof.

Section 2. Restrictions Imposed. The Undersigned hereby declares that all of the Property shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon,

and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants, as well as those contained elsewhere in this Declaration.

Section 3. Use of Common Area.

a. No use shall be made of the Common Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

b. No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members, nor shall any Owner place any structure or fence, except those installed by Declarant or the Undersigned, whatsoever upon the Common Area.

c. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

Section 4. Residential Use. Subject to Section 5 of this Article IX, Lots shall be used for residential purposes only, including all ancillary uses permitted by applicable zoning ordinances. All residential units shall be constructed on site and mobile homes or manufactured/modular housing units shall not be allowed.

Section 5. Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, contractors, and designees to perform such reasonable activities, and to maintain upon portions of the Property such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots and development of the Property, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model units which shall be located on Lot(s) owned by Declarant or Declarant's designee, sales offices which shall be located on Lots owned by Declarant or Declarant's designee, parking areas and lighting facilities. Sales offices shall be removed from the Property and model units shall be sold to Owners within five (5) years from the date of completion. Sales offices and model units may be relocated from time to time to another Lot and shall be of a size compatible with the development of the Property. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Property in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Lot, the Common Area, and to public right-of-way.

Section 6. Household Pets. No animals, livestock, reptiles, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident(s) of the Property. An



Owner's right to keep household pets shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such Owner's Pet(s).

Section 7. Lots to be Maintained. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so that the same are visible from any neighboring Lot, the Common Area, or any street.

Section 8. Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, or outbuilding shall be placed or erected upon any Lot, and no residence shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction, alteration, repair or remodeling of a residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any residence shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 9. Miscellaneous Structures.

a. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale" or "For Rent" sign not to exceed five (5) square feet and except for political signs, posted no more than thirty (30) days prior to any election and removed the day after each election; notwithstanding the foregoing, signs, advertising, or billboards used by the Declarant or its designees in connection with the sale or rental of Lots, or otherwise in connection with any development of the Property, shall be permissible, provided that such use by the Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, the Common Area, or with such Owner's ingress or egress from a public way to the Common Area or his Lot.

b. Except as may otherwise be permitted by the Architectural Control Committee, all antennae, shall be installed inside any residence. Installation of satellite receivers shall be subject to prior approval of the Architectural Control Committee.

c. No clotheslines, dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street.

d. Any accessory building shall be a maximum of eight (8) feet in height and shall be of the same materials and color as the residence and shall be subject to the review of the Architectural Control Committee.

## Section 10. Vehicular Parking, Storage and Repairs.

a. Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the Property only if such parking or storage is done wholly within the enclosed garage located on a Lot, is otherwise screened so as to not be visible from any street adjoining property or common area, or is parked in the designated RV storage areas. Any such vehicle may be parked as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvements located thereon.

b. Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on or within the Property. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the Owner thereof.

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

d. All garages shall be a minimum of two (2) car and a maximum of three (3) car attached to the residential dwelling.

Section 11. Nuisances. No nuisance shall be permitted on or within the Property, nor any use, activity or practice which is the source of annoyance or embarrassment to, or which offends or disturbs, any residents of the Property, or which interferes with the peaceful enjoyment or possession and proper use of the Property, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant or its designees which are reasonably necessary to the development of and construction on the Property; provided, however, that such activities of

the Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his Lot or the Common Area, or with any Owner's ingress and egress to or from his Lot and a public way.

Section 12. Lots Not to be Subdivided. No Lot shall be subdivided, except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created thereby. Not less than one entire Lot, as conveyed, shall be used as a building site.

Section 13. Underground Utility Lines. All electric, television, radio, and telephone line installations shall be placed underground, except that during the construction of any residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

Section 14. No Hazardous Activities. No activities shall be conducted on the Property or within improvements constructed on or within the Property which are or might be unsafe or hazardous to any person or property.

Section 15. No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent property or Common Area. No sound shall be emitted from any Lot which is unreasonably loud or annoying and no odor shall be permitted from any Lot which is noxious or offensive to others.

Section 16. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Area, or any Lot, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All containers shall be removed from the street the same day and returned to its screened area. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. All trash receptacles shall be screened as provided in the Architectural Control Committee guidelines.

Section 17. Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot or any portion thereof, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his Lot under the following conditions:

- a. All leases shall be in writing;
- b. All leases shall provide that the terms of the lease and lessee's occupancy of the 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, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and
- c. No lease shall be for less than thirty days.

Section 18. Fences. Each homeowner of Block 1, Lots 1-6 and Block 5, Lots 1 and 2, Filing 1 and the Association as owner of Tract A shall be required to construct a privacy fence along the south property line prior to the issuance of a Certificate of Occupancy by the City of Fruita. The fence must adhere to the following specifications:

- a. Fence shall not be less nor more than 6' high.
- b. Fence shall be made of synthetic plastic lumber that looks like natural wood.
- c. Fence shall be light tan in color only.
- d. Fence shall be constructed on standard 8' horizontal sections.
- e. The fences must be placed exactly 10' from the rear of the property line, except for Lot 6, Block 5, which must be placed 15' from the rear of the property line.
- f. Fence to be located on the eastern edge of Block 5, Lot 2 at the intersection of Kaley Street and Ray Drive must be placed to comply with any City of Fruita fencing requirements for sight distance.
- g. Each individual homeowner shall be responsible for the maintenance of the fence constructed upon his lot.
- h. This Section 18 shall not be amended or repealed without the written consent of the City of Fruita.

Section 19. Rules and Regulations. Rules and regulations concerning and governing the Property or any portion thereof may be adopted, amended or repealed, from time to time by the Board of Directors of the Association, 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. Fees for use of the RV storage area shall be adopted by the Board of Directors of the Association and failure to pay such fees and/or fines shall result in the assessment and lien set forth in Article IV, Section 11 above.

Section 20. Management Agreement and Other Contracts.

- a. The Association may utilize professional management in performing its duties hereunder. 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 thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.
- b. Subject to Article IX, Section 19(a) hereof, any contracts, licenses or leases entered into by the Association while the Declarant controls the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of the Declarant's control or the Association, upon thirty (30) days prior written notice.

c. Notwithstanding anything to the contrary contained in this Section 19, the Association may enter into contracts, licenses and leases in violation of Section 19(b) hereof upon a waiver of any requirements contained herein by the Federal National Mortgage Association.

Section 21. No Mining or Drilling. No mining, drilling, quarrying, digging or excavating for the purpose of testing for the existence of, or extracting oil, gas, coal or minerals of any kind shall be performed upon or within the Property.

Section 22. Irrigation. Due to concerns regarding water conservation and the geologic integrity of the Subdivision, the Association shall have the exclusive right to control the irrigation system within the Subdivision. The Association shall own 32 shares of Grand Valley Irrigation Company stock. Use of the irrigation system shall be controlled by the Association under Rules and Regulations adopted by the Association which shall incorporate xeriscape principles. The 32 shares of Grand Valley Irrigation Company stock shall be transferred to the Association prior to the conveyance of any Lot and shall not be encumbered, dedicated nor conveyed in all or part without the express written consent of the City of Fruita, Colorado. This provision of the Declaration may not be amended without the express written consent of the City of Fruita.

Section 23. Drainage. Release of contaminants or hazardous materials into the Subdivision drainage is prohibited and the Association shall indemnify and hold harmless Grand Valley Irrigation Company from any such contamination.

Section 24. Geotechnical Requirements. Prior to commencement of the construction of any improvements on any Lot the owner of such Lot shall provide the Architectural Control Committee with plans for an engineered foundation certified by a Colorado licensed engineer. Written confirmation of compliance of any subdivision geotechnical requirements from a licensed engineer shall be submitted to the Architectural Control Committee for review and approval.

Section 25. Right to Farm Act. All owners of lots are subject to the provisions of §35-3.5-101, *et al.* C.R.S. regarding the right of neighboring properties to be farmed without constituting a nuisance.

## ARTICLE X FIRST MORTGAGES

Section 1. Member and First Mortgagee Approval. The Association shall not unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the Members and sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each First Mortgage owned);

a. by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Lots, improvements thereon or the Common Area;

b. fail to maintain full current replacement cost fire and extended insurance coverage on the Common Area;

c. use hazard insurance proceeds for Common Area property losses for purposes other than to repair, replace, or reconstruct such property;

d. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any common property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads, or other purposes reasonably necessary or useful for the proper maintenance or operation of the Property or the Association);

e. add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendments to any of such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of such a request shall be deemed to have approved such request, and provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and further provided that this subsection (e) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Property or the improvements thereon;

(1) voting;

(2) assessments, assessment liens or subordination of such liens;

(3) reserve for maintenance, repair and replacement of those elements of the Common Area which must be maintained, repaired or replaced on a periodic basis;

(4) insurance, including but not limited to fidelity bonds;

(5) rights to use of the Common Area;

(6) responsibility for maintenance and repair of any portion of the Property;

(7) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property;

(8) interests in the Common Area;

(9) convertibility of Lots into Common Area or of Common Area into Lots;

(10) leasing of Lots or dwellings constructed thereon;

(11) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Lot;

(12) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages;

f. restore or repair the Common Area, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to any insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Common Area and the construction of improvements thereon;

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the First Mortgagee or insurer or guarantor of the First Mortgage and the residence address of the property which is subject to such First Mortgage, each such First Mortgage or insurer or guarantor of such a First Mortgage, shall be entitled to timely written notice of:

a. any condemnation loss or casualty loss which affects a material portion of the Property or any Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

b. any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

c. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

d. any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article X.

Section 3. Financial Statement. The Association shall provide a financial statement for the immediately preceding fiscal year free of charge to any First Mortgagee, insurer or guarantor of a First Mortgage within a reasonable time after written request therefor.

## ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons, including without limitation the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of the aforesaid documents in any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Easements. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved as shown on the recorded plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 4. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 5. Street Lighting. Unless street lighting and the cost thereof is provided by the community in which jurisdiction this subdivision is situated, all Lots shall be subject to and bound to Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado.



Section 6. Duration, Revocation, and Amendment.

a. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided in Article X hereof and in Subsections (b) and (c) of this Section 6, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by any instrument approved in writing by not less than sixty-seven percent (67%) of the Members. Such amendment shall be effective when duly recorded in Mesa County, Colorado.

b. If Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, Declarant shall have and is hereby specifically granted the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's control or the Association.

c. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or Bylaws of the Association at any time prior to the termination of Declarant's control or the Association, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

d. Pursuant to §38-33.3-217(7), C.R.S., the Association acting through its executive board may, under certain circumstances, petition the Mesa County District Court for an order amending this Declaration.

Section 7. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under, and across the Common Area, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns, hereby retains a right to store construction materials on Lots owned by Declarant and to make such other use thereof as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations hereunder, and the sale of the Lots. Any special declarant rights created or reserved under this Article or elsewhere in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the office of the Clerk and Recorder for the County of Mesa. The rights of Declarant

reserved in this Section 7 shall expire five (5) years after the recording of this Declaration. Such instrument shall be executed by Declarant and its transferee. Any rights granted to Declarant under this Declaration shall expire on the date which is ten (10) years from the recording date of this Declaration, unless otherwise provided herein.


Section 8. Easement for Encroachments. If any portion of a structure encroaches upon the Common Area or upon any adjoining Lot, or if any portion of the Common Area encroaches upon any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 9. Expansion. Declarant hereby reserves the right to create up to 106 lots within the property described on Exhibit "A" attached hereto. Upon the filing of record of an additional plat or plats the lots depicted thereon shall be subject to and encumbered by the terms and conditions of this Declaration and the owner of such lots shall be members of the Association.

Section 10. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be sent to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, c/o J. Richard Livingston, GOLDEN, MUMBY, SUMMERS, LIVINGSTON & KANE, LLP, P.O. Box 398, Grand Junction, Colorado 81502, until such address is changed by the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the day and year first above written.

STONE MOUNTAIN HOLDINGS, LLC

By:   
 Printed Name: DENNIS J. RAY  
 Title: PRES.

STATE OF ~~COLORADO~~ <sup>ARIZONA</sup> )  
COUNTY OF ~~MARICOPA~~ ) ss.

BOOK 2805 PAGE 647

Subscribed and sworn to before me this 9th day of February, 2001, by  
Dennis J. Ray, the Pres of Stone Mountain Holdings, LLC.

WITNESS my hand and official seal.

My commission expires: NOV. 30, 2002



Katherine Donnenfield  
Notary Public

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**BOOK 2805    PAGE 648**

**PARCEL 1**

The South 7½ acres of the E½ of the NW¼ of the NE¼ of Section 20, Township 1 North, Range 2 West of the Ute Meridian.

**PARCEL 2**

A parcel of land situated in the E½ of the NW¼ of the NE¼ of Section 20, Township 1 North, Range 2 West of the Ute Meridian, more particularly described as follows:

Commencing at the North Quarter corner of Section 20, Township 1 North, Range 2 West of the Ute Meridian, whence the Northeast corner of the NW¼ of the NE¼ of said Section 20 bears North 89°30'14" East a distance of 1318.40 feet for a basis of bearings, with all bearings contained herein relative thereto;

thence along the North line of the W½ of the NW¼ of the NE¼ of said Section 20 North 89°30'14" East a distance of 659.20 feet to the point of beginning, said point being the Northwest corner of the E½ of the NW¼ of the NE¼ of said Section 20;

thence along the North line of the E½ of the NW¼ of the NE¼ of said Section 20 North 89°30'14" East a distance of 174.43 feet;

thence along the Interstate 70 right of way the following three courses:

- 1) South 56°56'45" East a distance of 527.01 feet;
- 2) South 00°42'53" East a distance of 77.13 feet;
- 3) South 87°48'13" East a distance of 42.88 feet to a point on the East line of the NW¼ of the NE¼ of said Section 20;

thence along said East line of the NW¼ of the NE¼ of said Section 20 South 00°07'15" East a distance a 454.69 feet;

thence along the North line of the South 7½ acres of the E½ of the NW¼ of the NE¼ of said Section 20 South 89°30'44" West a distance of 658.48 feet to a point on the West line of the E½ of the NW¼ of the NE¼ of said Section 20;

thence along said West line of the E½ of the NW¼ of the NE¼ of said Section 20 North 00°10'16" West a distance of 825.00 feet to the point of beginning.

**PARCEL 3**

Lot 2 of Kaley Subdivision

## AGREEMENT

This AGREEMENT is made and entered into effective the 16th day of February, 2001, by and between THE CITY OF FRUITA, COLORADO ("Fruita") and PARKERSON BROTHERS, LLC ("Parkerson").

### RECITALS

A. Parkerson is the purchaser and developer of Stone Mountain Estates, a single-family residential subdivision approved by Fruita.

B. Parkerson agrees and understands Fruita is reviewing the proposed covenants, articles and bylaws for the Stone Mountain Estates Homeowner Association ("Association") and final approval of same is normally a condition precedent to the recording of the subdivision plat.

C. Parkerson has requested that Fruita record the Stone Mountain Estates Subdivision plat and associated documents prior to final approval by Fruita of the Association bylaws.

D. Fruita has agreed to record the Stone Mountain Estates subdivision plat and associated documents if Parkerson agrees no lots will be sold in the subdivision until Fruita has given final approval to the Association bylaws.

NOW, THEREFORE, for and in consideration of the premises contained herein the parties hereto mutually covenant and agree as follows:

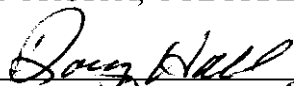
1. Parkerson shall not sell any lots in Stone Mountain Estates Subdivision until Fruita issues final approval for the Association bylaws.

2. Fruita shall record the Stone Mountain Estates Subdivision plat and associated documents as soon as is reasonably possible.

3. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year above.

CITY OF FRUITA, COLORADO

By:   
 Printed Name: DOUG HALL  
 Title: MAYOR

PARKERSON BROTHERS, LLC

By:   
 Alan Parkerson, Manager

**FIRST AMENDMENT TO THE  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
STONE MOUNTAIN ESTATES SUBDIVISION**

THE UNDERSIGNED, being the sole owner of all lots in **STONE MOUNTAIN ESTATES SUBDIVISION**, and the Successor Declarant, hereby amends the Declaration of Covenants, Conditions and Restrictions recorded at Book 2805, Page 621, Mesa County Records, as follows:

Article IX Section 18 Fences is amended and restated as follows:

Successor Declarant has built and transferred to the Association a common boundary six (6) foot solid vinyl fence along the south boundary of Stone Mountain Estates, Blocks 1 and 5, Filing 1. The Association, by and through each individual lot owner, shall be responsible for the maintenance and upkeep of the fence after expiration of the warranty from the Successor Declarant on April 1, 2002.

This Section 18 shall not be amended or repealed without the written consent of the City of Fruita, Harold Henry, 960 17½ Road, Fruita, CO 81521 and Robert G. LeBaron, Jr., 972 17½ Road, Fruita, CO 81521, their heirs, successors or assigns.

Article IX Section 22 Irrigation is amended to restate the last sentence in Section 22 to read as follows:

The irrigation system shall not be modified or changed or the provisions of this Section 22 amended without the express written consent of the City of Fruita, Harold Henry, 960 17½ Road, Fruita, CO 81521, Kenneth Henry, 968 17½ Road, Fruita, CO 81521, Chuck Stockman, 970 17½ Road, Fruita, CO 81521, and Robert G. LeBaron, Jr., 972 17½ Road, Fruita, CO 81521, their heirs, successors or assigns.

Dated this 24<sup>th</sup> day of <sup>May</sup>~~April~~, 2001.

PARKERSON BROTHERS, LLC, a Colorado  
Limited Liability Company

By: \_\_\_\_\_

Alan Parkerson  
Alan Parkerson, Manager

BOOK 3017 PAGE 774  
2039585 02/07/02 0952AM  
MONIKA TODD CLK&REG MESA COUNTY CO  
REC FEE \$10.00

The City of Fruita hereby consents to this Amendment.

CITY OF FRUITA

By:

Title:

Doug Hall  
MAYOR

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

Subscribed and sworn to before me this 24<sup>th</sup> day of May, 2001, by Alan Parkerson,  
Manager, Parkerson Brothers, LLC.

WITNESS my hand and official seal.

My commission expires: 3/26/2005

Doothy L. Miller  
Notary Public

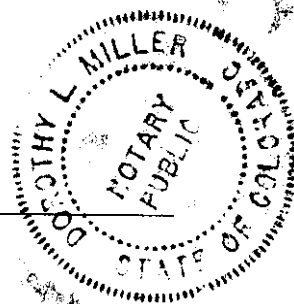
STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

Subscribed and sworn to before me this 21<sup>st</sup> day of May, 2001, by Doug Hall  
Mayor, for the City of Fruita.

WITNESS my hand and official seal.

My commission expires: 3/26/2005

Doothy L. Miller  
Notary Public



2130831 07/01/03 1049AM  
JANICE WARD CLK&REC MESA COUNTY CO  
REC FEE \$15.00 SURCHG \$1.00

MAY 16 2003

SECOND AMENDMENT  
TO THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
STONE MOUNTAIN ESTATES SUBDIVISION

The undersigned, being the Declarant and the owner of more than 67% of the lots in Stone Mountain Estates Subdivision, hereby amends the Declaration of Covenants, Conditions and Restrictions ("Declaration") as recorded at Book 2805, Page 621 and amended at Book 2865, Page 181, Mesa County Records, as follows:

1. All references to an RV Storage area are hereby deleted as Stone Mountain Estates Subdivision does not contain an RV Storage area.
2. Article V, Section 2 of the Declaration is amended to delete the following: "All dwellings shall have a minimum of 1,400 square feet of livable space and all structures shall have an exterior finish of natural or synthetic stucco with a natural color.
3. The total number of residential lots in Stone Mountain Estates Subdivision shall be 107.
4. All other terms and conditions of the Declaration shall remain in full force and effect.

Dated: May 14, 2003.

FRUITA STONE MOUNTAIN, LLC, a Colorado  
Limited Liability Company

By:

Alan Parkerson  
Manager

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA         )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May, 2003, by Fruta Stone Mountain, LLC, a Colorado Limited Liability Company, by Alan Parkerson, Manager..

WITNESS my hand and official seal.  
My commission expires: 8-2-03

Laura L Hartman  
Notary Public





**AMENDMENT AND SUPPLEMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF  
STONE MOUNTAIN ESTATES SUBDIVISION**

This Amendment and Supplement of Declaration of Covenants, Conditions and Restrictions of Stone Mountain Estates Subdivision (the "Supplement of Declaration") is made as of the 10<sup>th</sup> day of JUNE, 2003, by Parkerson Brothers, LLC (the "Successor Declarant").

A. Declarant has heretofore caused to be recorded in Book 2805 at Page 621, Mesa County, Colorado Records, a Declaration of Covenants, Conditions and Restrictions of Stone Mountain Estates Subdivision (the "Declaration") and at Book 2865 at Page 181, Mesa County, Colorado Records, a First Amendment to the Declaration.

B. In Article XI, Section 9 of the Declaration, Declarant expressly reserved for itself and any Successor Declarant (all capitalized terms used herein shall have the meanings as defined in the Declaration, unless otherwise defined or modified herein) the right to expand the Property by annexing and submitting additional Lots and Common Area by one or more duly recorded supplements to the Declaration.

C. Declarant wishes to submit to the Property the following described property:

Stone Mountain Estates Subdivision, Filing No. Three

Declarant hereby declares that both the Property and the Supplemental Property shall be held, sold and conveyed subject to the Declaration, as amended, which is for the purpose of protecting the value and desirability of the Property and the Supplemental Property and which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property of the Supplemental Property.

1. General. The terms and provisions contained in this Supplement to Declaration shall be in addition and supplemental to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall be applicable to the Supplemental Property. The definitions used in the Declaration are hereby expanded and shall hereafter be deemed to encompass and refer to the Property as defined in the Declaration and the Supplemental Property as defined herein. For example, reference to the "Property" shall mean both the Property and the Supplemental Property, reference to the "Owner" shall mean the record owner of fee simple title both to any Vacant Lot or Dwelling Unit as defined in the Declaration and to the Lots constituting the Supplemental Property, reference to "Member" shall mean every Owner as defined in the Declaration and as modified by this Supplement to Declaration, and reference to the "Declaration" shall mean the Declaration as

supplemented by this Supplement to Declaration. All ownership and other rights, obligation and liabilities of owners of original Lots, Vacant Lots and Dwelling Units are hereby modified as described herein.

2. Effect of Expansion. Assessments levied by the Association as provided in the Declaration, after the recording of this Supplement to Declaration, shall be levied against all Lots including Lots which are part of the Supplemental Property. Notwithstanding any inclusion of additional Lots under the Declaration, each Owner (regardless of whether such Owner is the owner of a Vacant Lot or Dwelling Unit shown on the original plat or is the owner of a Lot Constructed in the Supplemental Property) shall remain fully liable with respect to his obligation for the payment of the Assessments of the Association, including those relating to the expenses for all Common Area and related costs and fees, if any. The recording of this Supplement to Declaration shall not alter the amount of the assessments assessed to a Vacant Lot or Dwelling Unit prior to such recording.

3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

4. Conflicts between Documents. In case of conflict between the Declaration as supplemented hereby and the Articles and the Bylaws of the Association, the Declaration as supplemented shall control.

DATED as of the day and year first above written.

PARKERSON BROTHERS, LLC

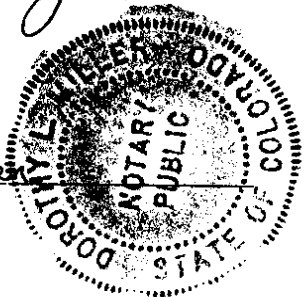
By: Alan Parkerson, Manager  
Alan Parkerson, Manager

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA         )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of June, 2003, by Parkerson Brothers, LLC, by Alan Parkerson, Manager.

WITNESS my hand and official seal.  
My commission expires: 3/26/05

Anthony J. Miller  
Notary Public



**THIRD AMENDMENT TO THE DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
STONE MOUNTAIN ESTATES SUBDIVISION**

THE UNDERSIGNED, as a result of the vote of the April 2007 HOA Meeting, the President of the Stone Mountain Estates subdivision hereby amends the Declaration of Covenants, Conditions and Restrictions recorded at Book 2805, page 621, Mesa County Records as follows:

Article IV, Section 11- Lien for Assessments is amended to add the following:

- d. Effective with the required quorum of votes, a homeowner will have until January 31 of the following year to pay their Homeowner Association dues before a lien can be placed on the property. A fine of \$5.00 per month will be assessed until the lien is placed. The homeowner is responsible for all cost associated with placing and removing the lien.

Article V, add Section 9 as new:

**Section 9: Fines**

A fine of \$50.00 per month can be imposed if a homeowner does not finish their yard within 60 days of purchasing a home with an unfinished yard or redoing the yard. A lien can be placed on the property if the fines exceed \$300.

Dated this 4<sup>th</sup> day of December, 2007.

**STONE MOUNTAIN ESTATES HOMEOWNER ASSOCIATION**

By 

Robert Robinson, President, Stone Mountain Estate HOA