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 Janica Ward CLK&REC Mesa County, CO
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DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CANTERBURY PARK

THIS DECLARATION ("Declaration") made this 13th day of October, 2005, by Zeck Homes, Inc. a Colorado corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the County of Mesa, State of Colorado, described as follows:

The NE1/4 SW1/4 NW1/4 and the NW1/4 SE1/4 NW1/4 of Section 16,
 Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado;

which shall be the property ("Property") under this Declaration; and,

WHEREAS, Declarant deems it desirable to impose a general plan for the improvement, development and maintenance of the Property and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enhancing, maintaining and protecting the value and attractiveness thereof; and,

WHEREAS, Declarant deems it desirable to set aside a portion of the Property as common areas for the use of the owners of the Property, and in part for the use of the general public, and to establish a Colorado nonprofit corporation, CANTERBURY PARK HOMEOWNERS' ASSOCIATION, INC., to which such common areas from time to time shall be conveyed and which shall be responsible for the management and maintenance of the planned development referred to herein and enforcement of the terms of this Declaration.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that the Property shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a general plan for the improvement and development of the Property. All of said limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Property or any part thereof and the successors in interest of such parties, and are imposed upon the Property and every part thereof as equitable servitudes which may be enforced by the Declarant, its successors and assigns, each Owner (as hereinafter defined), his or her successors and assigns, or by the Association (as hereinafter defined), its successors and assigns; provided, however, that no provisions of this Declaration shall limit, in

any way, Declarant's construction of improvements on and development of Canterbury Park, nor Declarant's right to maintain construction, sales or leasing offices or similar facilities on any real property in Canterbury Park owned by Declarant (or owned by an Owner with the consent of such Owner), nor Declarant's right to post signs incidental to construction, sales or leasing.

ARTICLE I

DEFINITIONS

Section 1.01. "Articles" shall mean Articles of Incorporation of Canterbury Park Homeowners' Association, Inc., filed with the Colorado Secretary of State, as said Articles may be amended from time to time, provided such Articles shall not be amended, changed or interpreted so as to be inconsistent with this Declaration.

Section 1.02. "Assessment" shall mean and refer to any or all of the Assessments hereinafter defined:

- (a) "Regular Assessment" shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot as provided for in this Declaration.
- (b) "Special Assessment" shall mean and refer to a charge against any Lot, directly attributable to such Owner, for certain costs incurred by the Association or Declarant for materials or services furnished to such Owner or his or her Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence or willful misconduct of any Owner, his or her employees, guests or invitees, or for excessive use or special use of the services or facilities provided by the Association, including, but not limited to, parking, trash removal and maintenance of improvements.
- (c) "Capital Improvement Assessment" shall mean and refer to a charge against any Lot representing a portion of the cost of the Association for the installation, construction, unexpected repair or replacement of any capital improvements, including the necessary fixtures and personal property related thereto, on the Common Area or any other portion of the Property upon which the Association may be required to install, construct, repair or replace any capital improvements as provided in this Declaration.

Section 1.03. "Association" shall mean and refer to Canterbury Park Homeowners' Association, Inc., a nonprofit corporation, incorporated under the laws of the State of Colorado.

Section 1.04. "Association Water" shall mean and refer to all shares of the capital stock of Grand Valley Irrigation Company and any and all other water or water rights, ditch or ditch rights, reservoir or water storage rights appurtenant to or used in connection with any portion of the Property or owned by the Association.

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

Section 1.06. "Bylaws" shall mean the Bylaws of the Association which have been or will be adopted by the Board, as such Bylaws may be amended from time to time, provided said Bylaws shall not be amended, changed or interpreted so as to be inconsistent with this Declaration.

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

Section 1.08. "Common Area" shall mean any and all real property and the improvements thereon, and any personal property, owned or leased from time to time by the Association for the common use and enjoyment of the Members, including, without limitation, open space, which shall be available for use by the general public as well as the Members. The Common Area consisting of real property shall be as shown on the recorded plat of the Property. Common Area shall also include any and all irrigation lines and equipment used in delivering irrigation water to, onto and across the individual lots. Declarant shall convey the Common Area to the Association, fully landscaped as required, free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instrument which conveys the Common Area to the Association.

Section 1.09. "Common Expenses" shall mean and refer to the actual and estimated costs of:

- (a) maintenance, management, operation, repair and replacement of the Common Area, to the extent provided in this Declaration, including, but not limited to, utilities, central highspeed internet access lines, if any, trash pick-up and disposal, landscaping and other services benefitting the Common Area;
- (b) fire, casualty, liability and other insurance covering the Common Area and workmen's compensation for all employees;
- (c) unpaid assessments;
- (d) management and administration of the Association, including, but not limited to, bonding of the members of the Board, officers and employees of the Association, and compensation paid by the Association to accountants, attorneys and employees, for services benefitting the Association or Common Area;

- (e) reasonable reserves as appropriate;
- (f) taxes paid by the Association;
- (g) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area or any portion thereof;
- (h) amounts paid or incurred by the Association in collecting assessments pursuant to Article VI hereof, including amounts expended to purchase a Lot in connection with the foreclosure of the assessment lien against such Lot;
- (i) expenses incurred by the Association for any reason whatsoever in connection with the Common Area, this Declaration or any amendment to this Declaration, the Articles, or the Bylaws or in the furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by the Board pursuant to this Declaration or any amendment to this Declaration;

Section 1.10. "Conveyance" shall mean and refer to conveyance of a fee simple title, or lease of any part of the Property.

Section 1.11. "Declarant" shall mean and refer to Zeck Homes, Inc., its successors and assigns.

Section 1.12. "Lot" shall mean and refer to each numbered Lot now existing or to be created from the Property and any additional real property at any time annexed thereto. The boundaries of a Lot shall be as shown and defined on the original plat map and on any additional or re-plat map or maps recorded in the Mesa County Records.

Section 1.13. "Unimproved Lot" shall be a Lot upon which no improvements have been constructed.

Section 1.14. "Improved Lot" shall be a Lot upon which improvements have been constructed.

Section 1.15. "Member" shall mean and refer to every person or entity who holds a membership in the Association as provided in Article II, Section 2.01.

Section 1.16. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot, or any interest therein, including but not limited to, the improvements thereon, to secure the performances of an obligation, which Lot will be reconveyed upon completion of such performance.

Section 1.17. "Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of deeds of trust, and the holders of any indebtedness secured by mortgages.

Section 1.18. "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust.

Section 1.19. "Owner" shall mean and refer to Declarant and to any person or entity holding a record fee simple ownership interest in any Lot which is a part of the Property, including contract purchasers, but excluding Mortgagees and those having such interest merely as security for the performance of an obligation.

Section 1.20. "Property" shall mean and refer to all the real Property described at the beginning of this Declaration, together with any real property annexed thereto in the future.

Section 1.21. "Sight Distance Easement" shall mean an area designated by the City of Fruita, Colorado, to insure adequate unobstructed vision at all intersections.

Section 1.22. "Canterbury Park" shall mean all of the Property, and improvements thereon, now or hereafter subject to this Declaration or any amendment to this Declaration.

ARTICLE II

THE ASSOCIATION

MEMBERSHIP; VOTING RIGHTS; DECLARANT CONTROLS

Section 2.01. Membership. Every Owner of one or more Lots in the Property shall be entitled and required to be a member of the Association, subject to the voting rights provisions of this Article II. No person or entity other than an Owner of one or more Lots in the Property may be a member of the Association.

Section 2.02. Allocation of Votes. Each Lot shall be allocated one vote in the Association, subject to Section 2.05 below.

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

Section 2.04. Membership Appurtenant. Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot.

Section 2.05. Declarant Control.

- (a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (1) ten (10) years after the date of recording of this Declaration in the office of the Mesa County, Colorado, Clerk and Recorder; (2) sixty (60) days after conveyance of 75 percent of the Lots to owners other than Declarant; (3) two (2) years after the last conveyance of a Lot by Declarant

in the ordinary course of business, or; (4) two (2) years after any right to add new Lots was last exercised, Declarant may appoint and remove officers and members of the Board of Directors of the Association, subject to the limitations stated in this section.

- (b) Not later than sixty (60) days after conveyance of 25 percent of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not fewer than 25 percent of the members, of the Board of Directors must be elected by the Owners of Lots other than Declarant.
- (c) Not later than sixty (60) days after conveyance of 50 percent of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, not fewer than 33 1/3 percent of the members of the Board of Directors must be elected by Owners other than Declarant.
- (d) Not later than the termination of the period of Declarant control specified in subsection 2.05(a) of this Article, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of who must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.
- (e) Notwithstanding anything to the contrary stated elsewhere in this Section 2.05, by a vote of 67 percent of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a member appointed by Declarant or a member elected pursuant to a class vote under C.R.S., Section 38-33.3-207(4).

Section 2.06. Quorum. A quorum will be deemed present throughout any meeting of the Association if persons entitled to cast 20 percent of the votes which may be cast for election of the Board of Directors of the Association are present in person or by proxy at the beginning of the meeting. A quorum will be deemed present throughout any meeting of the Board of Directors of the Association if persons entitled to cast 50 percent of the votes on that Board are present at the beginning of the meeting.

ARTICLE III

PROPERTY RIGHTS IN THE LOTS AND COMMON AREA

Section 3.01. Title to the Lots. The Declarant, its successors and assigns, shall convey fee title to the Lots subject to current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this

Declaration. No Owner shall be entitled to sever his or her ownership interest in a Lot from his or her membership in the Association, provided that this clause shall not be construed as precluding the Owner of a Lot from creating a co-tenancy or joint tenancy with other person or persons.

Section 3.02. Title to the Common Area. The Declarant, its successors and assigns, shall convey fee simple title to the Common Area to the Association, free and clear of all liens and encumbrances, except easements, conditions and reservations then of record, including those set forth in this Declaration prior to sale or conveyance of any individual lots in Canterbury Park.

Section 3.03. Members' and General Public's Easements of Enjoyment. Every Member shall have a non-exclusive right and easement in and to the Common Area, including, but not limited to, an easement for ingress, egress and support over and through the Common Area, and easements for utilities, sewage and drainage. Additionally, the general public shall have an easement for ingress and egress over and through, and for use of in common with the Members, the open space included in the Common Area. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area;
- (b) The Association may borrow money and encumber by mortgage or deed of trust the Common Area or any part thereof for the purpose of improving the Common Area if seventy-five percent (75%) of the Members entitled to vote agree to such action, including seventy-five percent (75%) of the votes allocated to Owners other than Declarant, provided any such mortgage or deed of trust shall be expressly subordinate to the rights of the Members and the general public as granted herein;
- (c) The right of the Association to suspend a Member's voting rights for any period during which any Assessment against his or her Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association, provided that any suspension of such voting rights except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast seventy-five percent (75%) of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice

of the proposed action is sent to every Member no less than thirty (30) days nor more than sixty (60) days in advance. Any provisions of this Declaration to the contrary notwithstanding, no provisions in the Declaration regarding the availability of the open space included in the Common Area for use by the general public shall be amended, deleted or limited without the express written consent of the City of Fruita.

- (e) The right of Declarant or its designees to enter upon the planned development for purposes of construction of the development and for purposes of making repairs and remedying construction defects; provided such entry shall not interfere with the use of any occupied Lot unless authorized by the Lot Owner.
- (f) The right of the Association to charge reasonable admission and other fees for the use of any recreational or storage facility situated upon the Common Area.

Section 3.04. Delegation of Use. Any Member may delegate in accordance with the Bylaws, his or her right of enjoyment to the Common Area to the members of his or her family, his or her guests and invitees, or his or her tenants, or contract purchasers who are in possession of such Member's Lot.

Section 3.05. Waiver of Use. No Member may exempt himself or herself from personal liability for assessments duly levied by the Association nor release the Lot owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his or her Lot.

Section 3.06. Parking Plan. Each Lot, when improved, shall provide a minimum of two parking spaces for each residence located upon said Lot. All parking spaces shall have an asphalt-based or concrete surface.

Section 3.07. General Restrictions. All future Owners of the Lots by their acceptance of their respective deeds, covenant and agree as follows:

- (a) That the Common Area shall remain undivided, and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of Owners with respect to the operation and management of the Property.
- (b) The Association shall have a perpetual and non-exclusive easement on the Common Area and all Lots for the purpose of ingress and egress in connection with the maintenance of and repairs to the Common Area, including without limitation, the irrigation system, and maintenance and upkeep of the grass areas and landscaping.

- (c) The City of Fruita shall have a perpetual and non-exclusive easement on, over and across Tracts D and E for the purpose of maintenance and repair of the concrete sidewalk along the north side of said Tracts and the City of Fruita shall be solely responsible for such maintenance and repair of said sidewalk. The Association shall remain responsible for maintenance and upkeep of landscaping and irrigation facilities situated within said Tracts.

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The undersigned, for each Lot within the Property (including any Lots subsequently added under Article XII below), covenants, and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in that deed, is deemed to covenant and agree to pay to the Association: (a) all assessments or charges levied against that Lot; (b) all fees, charges, late charges, attorneys fees, fines, collection costs, and interest charged pursuant to this Declaration or as allowed by Section 38-33.3-316(1), C.R.S., or any other provision of CCIOA as it may be subsequently amended by any other applicable law. All items set forth in this section, from the time such items become due, shall be a charge on and covenant running with the land and shall be a continuing lien on the Lot against which each such item is charged. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. Each such item, together with interest, costs, and reasonable attorneys fees, shall also be the joint and several personal obligation of each person and entity who was the Owner of the Lot at the time when the item became due. This personal obligation shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may be exempt from liability for assessments by waiver of use or enforcement of Common Expenses, Association Water, Irrigation Facilities, or other assets or benefits of the Association, or by abandonment of Lot or Residence.

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

Section 4.03. Initial Assessment.

- (a) The initial assessment for Common Expenses of the Association shall be fixed in an amount set by, and made upon the resolution of, the Board of Directors of the Association. The initial assessment may include an amount for acquisition, construction, installation, repair and replacement of capital items and new improvements as more specifically authorized in Section 4.03(b), below.

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

Section 4.04. Date of Commencement of Annual Assessment; Due Dates. The first Assessment for Common Expenses and capital items and improvements shall be adjusted according to the number of months remaining in the calendar year for which the Assessment is made, if less than a full year. Thereafter, the Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject to the Assessment. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

Section 4.05. Expense Allocation. Except as otherwise stated in this section, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of Lots then in the Property. Any Common Expense or portion of any Common Expense benefitting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefitted by or causing the Common Expense.

Section 4.06. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate not to exceed 21 percent per annum set annually by the Association's Board of Directors. In the event the Board fails to set the interest rate, the rate shall be 15% per annum. In the event of nonpayment of assessments, the Association may exercise any and all remedies available under law and as provided under this Declaration.

Section 4.07. Priority of Lien. The lien for assessments which includes all those items specified in item (a) and (b) in Section 4.01 of this Article IV shall have the priority specified in CCIOA which, as of the date of this Declaration, is codified at Section 38-33.3-316(2), C.R.S.

ARTICLE V

BUDGET AND RECORDS

Section 5.01. Books and Records. The Board of Directors shall cause to be maintained a full

set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles. All books, records, and papers of the Association shall be available for inspection and copying by any Member or his or her representative during regular business hours at the principal office of the Association. The Board of Directors may establish reasonable rules concerning notice to be given the custodian of the records by anyone desiring to inspect them, and payment of costs of reproducing any documents requested by any Member.

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

Section 5.03. Delivery of Budget. Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws of the Association.

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

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

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

ARTICLE VI

NONPAYMENT OF ASSESSMENTS

Section 6.01. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at a rate not to exceed 21 percent per annum and in addition to all legal and equitable rights or remedies, the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same or, upon compliance with the notice provisions set forth in Section 6.02 hereof, proceed to foreclose the lien (provided for in Section 4.01 hereof) against the Lot, and there shall be added to the amount of such Assessment and interest thereon, all costs which may be incurred by the Association in the collection thereof, including reasonable attorneys fees. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or institute judicial

foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 6.02. Notice of Claim of Lien. Before action is brought to foreclose an Assessment lien on a Lot or to proceed under the power of sale provided in Section 6.03 with regard to a Lot, the Association may but shall not be required to give additional notice of the Association's claim of assessment lien by mailing a Notice of Assessment Lien by United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and recording said Notice of Assessment Lien in the office of the Mesa County Clerk and Recorder. Any such Notice of Assessment Lien shall recite a sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid Assessment, plus reasonable attorneys fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association as claimant.

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

Section 6.04. Curing of Default. Upon the timely curing of any delinquency for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, a certificate setting forth the satisfaction of such claim and release of such lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover interest, the costs of preparing and filing or recording such release, and other expenses incurred.

Section 6.05. Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided, all remedies being cumulative.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 7.01. Architectural Approval. All improvements on any Lot shall be in compliance with the zoning approved by the City of Fruita. No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Property (including Common Area), nor shall any exterior addition to or change or alteration therein (including painting) be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee provided for in Section 7.03 hereof as to harmony of external design and location in relation to surrounding structures and

topography. In the event said Committee, or its designated representatives, fails to approve or disapprove such design and location within thirty (30) days after said plan and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All improvement work approved by the Architectural Committee shall be diligently commenced and completed.

Section 7.02. Landscaping Approval. No Owner shall plant or place any trees, bushes, shrubs or plants upon any Lot until the plans and specifications for the species and placement of any such trees, bushes, shrubs or plants have been submitted to and approved in writing by the Architectural Committee provided for in Section 7.03 hereof. Said plans as submitted shall show in detail the proposed elevations and locations of said trees, bushes, shrubs or plants, including the location and elevation of the same in relation to all other Lots subject to these restrictions.

Section 7.03. Appointment of Architectural Committee. The Declarant shall initially appoint the Architectural Committee consisting of not less than three (3) members, who shall remain in office until: (1) ten (10) years after the date of recording of this Declaration in the office of the Mesa County, Colorado, Clerk and Recorder; (2) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to owners other than Declarant; (3) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business, or; (4) two (2) years after any right to add new Lots was last exercised, whichever shall first occur. From and after such time and event, as the case may be, the Architectural Committee shall be appointed by the Board of the Association and shall be composed of three (3) or more representatives who need not be Members of the Association. In the event of the death or resignation of any member of the Committee prior to the time when the Board of the Association is vested with authority, the Declarant shall have the right to appoint such member's successor.

Section 7.04. No Liability. Neither Declarant, the Association, or the Architectural Committee or the members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of property affected by these restrictions by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications, and every Owner of any of said Property agrees that he or she will not bring any action or suit against Declarant, the Association, the Architectural Committee, or any of the members thereof to recover any such damage.

Section 7.05. Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date of completion of construction of any improvements within the Property, said improvements shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all the provisions in this Article VII, unless actual notice of such noncompliance or noncompletion, executed by the Architectural Committee or its designated representatives, shall appear of record in the office of the County Recorder of Mesa County, Colorado, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 7.06. Rules and Regulations. The Architectural Committee may from time to time, in its sole discretion, adopt, and may from time to time amend and repeal, rules and regulations for determining harmony of external design and location of structures and improvements, and changes to the same, in Canterbury Park in relation to surrounding structures and topography, and for interpreting and implementing the provisions hereof.

Section 7.07. Variances. Where circumstances, such as topography, location of property lines, location of trees, or other matters require, the Architectural Committee, by the vote or written consent of a majority of the Members thereof, may allow reasonable variances evidenced in writing as to any of the covenants, conditions or restrictions contained in the Declaration under the jurisdiction of such Committee, on such terms and conditions as it shall require. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except at the particular provision hereof covered by the variance and shall not necessarily serve as a basis for subsequent variances with respect to the other Lots. The granting of any variance shall not affect in any way the Association's or Owner's obligation to comply with the laws and ordinances of the City of Fruita and other applicable governmental laws or regulations.

Section 7.08. Appointment and Designation. The Architectural Committee may from time to time, by the vote or written consent of a majority of its members, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects, engineers or other qualified persons who shall have full authority to act on behalf of said Architectural Committee in all matters delegated.

Section 7.09. Review Fee and Address. Any plans and specifications shall be submitted in writing for approval together with a reasonable processing fee. The address of the Architectural Committee shall be the principal place of business of the Association or such other place as the Architectural Committee may from time to time designate in writing to the Board of Directors. Such address shall be the place for the submittal of any plans and specifications and the place where the current rules and regulations, if any, of the Architectural Committee shall be kept.

Section 7.10. Inspection. Any member or agent of the Architectural Committee may from time to time at any reasonable hour or hours and upon reasonable notice enter and inspect any property subject to the jurisdiction of said Architectural Committee as to its improvement or maintenance in compliance with the provisions hereof.

Section 7.11. General Provisions. The members of the Architectural Committee shall not be entitled to any compensation for services performed under Article VII hereof. The powers and duties of such Committee shall cease and terminate on a date forty (40) years after the date of the recording of this Declaration. Thereafter, the approval described in Article VII shall not be required unless, prior to said termination date and effective thereon, a written instrument shall be executed and duly recorded by the then record Owners or a majority of the Lots appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by said Committee.

Section 7.12. Compliance with Governmental Laws. The Declarant, its successors and assigns, and all future Owners of any Lot, and their heirs, personal representatives, successors and assigns by their acceptance of their respective deeds, and the Association shall be bound by and subject to the laws and ordinances of the City of Fruita and all other applicable governmental laws or regulations. No building or other structure or addition or change or alteration thereof shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain erected, placed, altered, maintained or permitted to remain on any of the real property within the Property, including the Common Area, which is in violation with any of the laws or ordinances of the City of Fruita or any other applicable governmental laws or regulations.

ARTICLE VIII

ASSOCIATION POWERS AND OWNERS' USE

Section 8.01. Authority. The Association shall have all rights, powers, and authority specified or permitted by: (a) CCIOA; (b) any other applicable law; (c) this Declaration; and (d) the Articles and Bylaws of the Association to the extent not inconsistent with (a), (b), or (c).

Section 8.02. Actions Against Owners. The Association may take judicial action against any Owner to enforce compliance with any provisions of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance and exercise any other right or remedy for enforcement of this Declaration permitted by law. All of such rights and remedies of the Association shall be cumulative.

Section 8.03. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate, or convey all or any part of the Common Area or any other Association asset, subject to the Association obtaining the express written consent of the City of Fruita prior to taking any such action. However, no such encumbrance, dedication, or conveyance shall be effective except in an instrument signed by seventy-five percent (75%) of the Owners, including seventy-five percent (75%) of all Owners other than Declarant, agreeing to such encumbrance, dedication, or transfer which has been recorded in the Mesa county records. Additionally, no open space available for use of the general public shall be encumbered, dedicated or conveyed in whole or in part without the express written consent of the City of Fruita in such instrument. This provision of the Declaration may not be amended or deleted without the express written consent of the City of Fruita. Any such instrument of encumbrance, dedication or conveyance may be signed in counterparts which shall together constitute a single agreement.

Section 8.04. Delegation of Use. Any Owner may delegate, subject to any Bylaws of the Association, his or her right of enjoyment to the Common Area and use of Association Water to the members of his or her family residing with him or her, his or her tenants, or contract purchasers who reside on the Lot owned by that Owner.

Section 8.05. Declarant's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its successors and assigns, or any agent,

contractor, subcontractor or employee of the Declarant to maintain during the period of construction and sale upon such portion of the properties as Declarant deems necessary such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to said construction and sale, including, but without limitation, a business office, storage area, construction yards, signs model units and sales office.

Section 8.06. Owner's Use. In addition to the duties stated elsewhere in this Declaration, each Owner shall have the duty and obligation to perform and comply with the following restrictions to preserve the overall value of the entire property:

- (a) Use of Lots is restricted to high quality, on site constructed single family residences with attached or detached garages for not more than three (3) cars, subject to the terms and provisions hereof relating to Architectural Control. All such improvements shall be constructed on Lots only in accordance with the Site Plan for the Lots on file with the City of Fruita. No manufactured or modular residences or garages shall be permitted in Canterbury Park. For purposes of this section, the terms "manufactured" or "modular" shall refer to residential structures constructed or assembled in substantial portion at a location other than the particular Lot being improved. All residences and garages shall have exterior materials of wood or other natural materials or shall be of other composition to simulate natural materials. Roofs shall be pitched and shingled or tiled. No store, detached office or place of retail business of any kind and no hospital, sanitarium, or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theater, saloon or other place of entertainment, nor any church, club, fraternal association or other association normally or regularly involving the gathering of people in groups larger than the family will be erected or permitted upon the sites, and no business of any kind or character whatever shall be conducted thereon or in or from any building thereon, except for home occupations or businesses as may be allowed by City of Fruita zoning regulations.
- (b) Maintenance, upkeep and repairs of any residence, garage or other improvements on each Lot, and all landscaping on each Lot, shall be the sole responsibility of the individual Owner thereof. The exterior of residences and garages shall be maintained in good condition and repair, including, without limitation, shingles, tiles, paint and trim. All landscaping, steps, and porches, shall be aesthetically pleasing and reasonably consistent with the landscaping of the surrounding Lots. Weather permitting, all Lots shall be reasonably landscaped within six (6) months after the residence is built on the Lot. All steps and porches shall be completed, including the appropriate painting, within thirty (30) days after the residence is built on the Lot. In the event any Unimproved Lot is sold or conveyed by Declarant to any Owner other than Declarant, an entity or person who is an owner of Declarant, or an entity

owned by some or all of the owners of Declarant, then construction of the residence and garage on such Lot, and all landscaping on such Lot, shall be completed within two (2) years after the date of such sale or conveyance.

- (c) All utilities, fixtures and equipment installed within the perimeter of any Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the perimeter lot line, shall be maintained and kept in repair by the Owner thereof, except for maintenance and repair of common irrigation lines and equipment. An Owner shall do no act nor any work that will impair any easement or hereditament nor any act nor allow any condition to exist which will adversely affect the other Lots and improvements or their Owners.
- (d) Refuse piles or other unsightly objects or materials shall not be allowed to be placed on or to remain upon any Lot. All receptacles or other equipment for the storage or disposal of refuse materials shall be kept in a clean and sanitary condition.
- (e) No commercial type vehicles, unlicensed vehicles, utility trailers, cargo trailers, or trucks shall be parked on any Lot or in any Common Area except during a reasonable time while engaged in transport to or from such Lot. For the purposes of this paragraph, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck. No recreational vehicles including, but not limited to, campers, boats, snowmobiles, trailers and motor homes, shall be parked on any Lot or Common Area in Canterbury Park, unless parked inside a garage or on a Lot out of plain sight from any street or streets adjoining the Lot behind a privacy fence or at the back of the Lot. No major vehicle repairs shall be conducted upon any Lot or Common Area in Canterbury Park except within enclosed garages. "Major vehicle repairs" shall include, without limitation, those which render the vehicle inoperable for more than a 24 hour period. No inoperable vehicles shall be parked or left on any Lot or in any Common Area in Canterbury Park for more than a 24 hour period, unless parked inside a garage or on a Lot out of plain sight from any street or streets adjoining the Lot behind a privacy fence or at the back of the Lot.
- (f) No Lot or easement shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be disposed of in a sanitary manner.
- (g) Subject to the provisions of Section 8.06(e) above, no Lot Owner shall be allowed to park in the area between the front of their home and the street more than two (2) vehicles, except while engaged in transport or for infrequent periods not to exceed 12 hours. All parking spaces shall have an asphalt-based or concrete surface.

- (h) There will be only one detached residence per Lot to be used by one (1) family only. Residences shall have a minimum of 1,100 square feet of living space in the case of single level structures and a minimum of 1,300 square feet of living space in the case of bi-level structures.
- (i) City of Fruita setback requirements shall apply regarding residence, garage and accessory building locations and Owners are responsible for confirming with the City of Fruita applicable setbacks and obtaining Architectural Control Committee approval pursuant to Article VII, above, before commencing construction on any Lot of any improvement subject to such setback requirements.
- (j) No elevated tanks of any kind (oil, gas, water, etc.) shall be constructed on any Lot.
- (k) Clotheslines, equipment, garbage cans, service yards or storage areas shall be adequately screened by planting or construction. No structure, tower or antenna shall be erected, altered, placed or permitted on the site which exceeds the height of the peak of the roof of the residence constructed on the Lot. Placement, cable placement and color of satellite dishes shall be subject to prior approval of the Architectural Committee as provided for in Section 7.01 hereof, to the extent permissible under applicable federal, state and local laws, rules and regulations. To the extent feasible, satellite dishes and antennas shall be placed in locations which are not visible from the street or streets bordering any lot on which placement occurs.
- (l) No obnoxious, offensive or other activity which would constitute a public or private nuisance or annoyance to the neighborhood will be permitted.
- (m) No dangerous or wild animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets may be kept if they are not kept, bred, or maintained for commercial purposes. All pets shall be under the control of their owner, whether by containment on the Owner's property or on a leash. No pet shall be allowed to run at large, endanger, or harass persons, property, or other animals, or constitute a nuisance or annoyance to other Lot Owners or occupants. The Board of Directors of the Association, when requested by any Owner, shall have the authority to determine whether or not the number of pets is unreasonable, or whether any animal or pet is a nuisance to any other Owner.
- (n) No firearms, unlawful fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged.

- (o) No advertising signs, billboards or unsightly objects shall be maintained or erected. "For Sale" signs may be posted no larger than those allowed by the then existing City of Fruita ordinances. Nothing contained in this paragraph shall be construed to prohibit the temporary placement of political signs for reasonable periods before and after elections as otherwise permitted by applicable law.
- (p) No fencing shall be placed on any Lot without approval of the Architectural Committee as provided for in Section 7.01 hereof, which approval may be withheld if such fencing is not in character and harmonious with the improvements existing on the other Lots and the Common Area in Canterbury Park or if such fencing interferes with maintenance and upkeep of any Common Area grass areas or landscaping. No fencing shall be constructed with any materials or in any manner that may obstruct or impede the natural flow of surface or drainage water across any Lot or Common Area within Canterbury Park. Owners are encouraged but not required to construct only split rail or open picket type fences not exceeding 48" in height, and if any fences in excess of 48" are constructed, to construct such fences only as open picket type fences. The foregoing notwithstanding, six (6) foot high privacy fencing may be constructed on or around Common Area Tracts A, B, and C, as described on the recorded plat for Canterbury Park. No fences shall be constructed in Canterbury Park in violation of any zoning, building or other law, ordinance, rule or regulation of the City of Fruita
- (q) In the event any Owner maintains and keeps his or her yard in a condition which violates any of the use restrictions hereinabove set forth, the Board of Directors of the Association shall have the power to contract with an independent third party to remedy the use violation. Said right to remedy shall arise after seven (7) days written notice of the nature of the violation is given to the Owner of the Lot, and the Owner has failed to remedy the violation within said 7-day period. The cost of correcting the violation shall be paid as a Special Assessment and is enforceable by the Association against the Owner of the Lot in violation, as provided in Article IV herein. This remedy shall be in addition to other remedies provided herein for enforcement of the provisions of this Declaration.
- (r) Any provisions of this Declaration to the contrary notwithstanding, no landscaping, fences, improvements or other objects in excess of 30 inches in height shall be placed in any Sight Distance Easements.

ARTICLE IX

IRRIGATION AND WATER RIGHTS

Section 9.01. System. Declarant shall construct a common pressurized irrigation system for the use and benefit of the Common Area and to provide irrigation water to the individual Lots.

Section 9.02. Maintenance and Water Assessments. The Declarant, its successors and assigns, shall maintain the system and pay all water charges until such time as it is transferred to the Association, provided however, that Declarant may be reimbursed for all payments of water charges. Upon the transfer to the Association, full responsibility for the maintenance of the system and payment of water charges shall be the responsibility of the Association.

Section 9.03. Ownership of Irrigation System and Restrictions on and Scheduling of Irrigation Water Usage. Due to concerns regarding water conservation, the Association shall have the exclusive right to control the irrigation system within Canterbury Park. The Association shall own 20 shares of the Capital Stock of the Grand Valley Irrigation Company. Grand Valley Irrigation Company irrigation water shall not be used to water the lawns and landscaped areas on more than 19 Lots in Canterbury Park at one time, and implementation of such restriction and all other use of the irrigation system shall be controlled by the Association under rules and regulations adopted by the Association. The irrigation system shall be transferred by Declarant to the Association upon completion of construction, and inspection and approval of the system by the Fruita City Engineer. The 20 shares of the Capital Stock of the Grand Valley Irrigation Company shall be transferred from Declarant to the Association prior to the conveyance of any Lot and shall not be encumbered, dedicated nor conveyed in all or in part without the expressed written consent of the City of Fruita, Colorado. The Association shall pay all fees and assessments to the irrigation company when due as necessary to prevent the loss of such water rights. This provision of the Declaration may not be amended or deleted without the expressed written consent of the City of Fruita.

Section 9.04. Irrigation Systems Within Perimeters of Lots. Lot Owners shall be solely responsible for installation of irrigation systems within the perimeters of their respective Lots, except as otherwise provided pursuant to agreement between any Lot owner and Declarant.

ARTICLE X

RIGHTS OF LENDERS

Section 10.01. Filing Notice: Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such Mortgage is a First Mortgage. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the

vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgagees over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

Section 10.02. Relationship with Assessments Liens.

- (a) The lien provided for in the Article hereof entitled "Nonpayment of Assessments" for the payment of Assessments shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Assessment becomes due, except as otherwise provided in Section 38-33.3-316(2)(b)(I), C.R.S..
- (b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage, except as otherwise provided in Section 38-33.3-316(2)(b)(I), C.R.S.; and (2) the foreclosure of the lien of said Mortgage, or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, except as otherwise provided in Section 38-33.3-316(2)(b)(I), C.R.S., but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.
- (c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Lots within the Property.

- (d) Nothing in this Section shall be construed to release any Owner from his or her obligations to pay for any Assessment levied pursuant to this Declaration.

ARTICLE XI

INSURANCE AND FIDELITY BONDS

Section 11.01. Insurance. The Association shall carry any and all insurance coverages required by the CCIOA.

Section 11.02. Corporate Employees. If any Owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance in an aggregate amount equal to not less than two months of current assessments plus reserve calculated from the then-current budget of the Association.

Section 11.03. Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain fidelity insurance in that same amount unless the Association names such a person as an insured employee in a contract of fidelity insurance described above.

Section 11.04. Additional Coverage. The Association may carry or require of an independent contractor employed to manage the Association fidelity insurance coverage in an amount greater than that specified in this section.

Section 11.05. Commons Expenses. Premiums for insurance required by the Association under this provisions are Common Expenses of the Association.

ARTICLE XII

SPECIAL DECLARANT RIGHTS

Section 12.01. Special Declarant Rights. Declarant reserves all special declarant rights available under CCIOA, currently defined at Section 38-33.3-103(29), C.R.S.

Section 12.02. Assignment by Declarant. Except as restricted by CCIOA or other applicable law, Declarant may assign (from time to time) some or all of Declarant's rights or obligations under this Declaration to any other person or entity and, upon such assignment, shall be relieved from any obligation or liability assigned.

Section 12.03. Sales Office and Models. Despite anything to the contrary stated elsewhere in this Declaration, the Declarant may maintain a sales and/or management office and model homes on the Property. The office may be located on any Lot owned or leased by Declarant and may be relocated to any other Lot owned or leased by Declarant from time to time, at Declarant's sole discretion. If Declarant ceases to own or lease any Lot, Declarant shall have a period of thirty (30)

days in which to remove the office described above from the Property. The Declarant may maintain one or more signs on the Common Area or Lots owned or leased by Declarant for the purposes of advertising the Property and the sales of Lots. The provisions of this section shall control in the event of any conflict with any other provisions contained in this Declaration.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.01. Rules and Regulations. The Association shall have the right to impose rules and regulations upon the Owners concerning use of the Common Area, Association Water, and any other Association property; provided, all rules and regulations shall apply equally and uniformly to all Lots and Owners.

Section 13.02. Enforcement.

- (a) The Association or the Owner (including Declarant) of any Lot may enforce any provision of this Declaration in an action at law or in equity. The relief sought may include damages (including, for example, consequential and incidental damages) for any violation, or injunctive relief, or both. This listing of possible remedies is not exclusive. It is the intent of the Declarant that the Association or an Owner may obtain any relief available under the then applicable law or the provisions of this Declaration for violation of any provision of this Declaration. All such rights and remedies shall be cumulative.
- (b) In any litigation or other proceeding concerning enforcement or interpretation of this Declaration, the prevailing party shall be entitled to recover reasonable attorney fees and court costs, in addition to any other relief available to that party.

Section 13.03. Term. The provisions of this Declaration shall each constitute covenants running with the land applicable to all of the Lots, binding Declarant and all persons and entities claiming by, through, or under it for a period of twenty (20) years from the date of this Declaration. Thereafter, this Declaration shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity.

Section 13.04. Amendment. Subject to the provisions of Section 38-33.3-217(1), (5) and (6), C.R.S., all or any portion of this Declaration other than the provisions of Article XII may be supplemented, changed, or canceled in whole or in part at any time by the consent of 67 percent of the Lots evidenced by an instrument in writing signed by all of the then Owners of the Lots in a manner provided by law at the time for conveyance of real property, when that instrument is duly recorded in the office of the Clerk and Recorder of Mesa County, Colorado. Upon recordation in that manner, any modification of this Declaration shall be valid and binding upon the Owners of the

Lots and their heirs, personal representatives, successors in interest, and assigns. This Declaration may also be amended as provided by Section 38-33.3-217(7), C.R.S., which permits amendment of the Declaration by order of the Mesa County District Court under certain circumstances.

Section 13.05. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.

Section 13.06. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first-class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the Mesa County, Colorado, real estate records by which that Owner took title and to the street address of that Lot, if any.

Section 13.07. Section Headings. The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration.

Section 13.08. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

Section 13.09. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of Declarant and each and all of its successors in interest and assigns.

Section 13.10. Gender. Whenever reference is made to persons, unless the context requires otherwise, words denoting the singular may be, and where necessary shall be, construed as denoting the plural number; and words of the plural number may be, and where necessary shall be, construed as denoting the singular number; and words of one gender may be, and where necessary shall be, construed as denoting such other gender as may be appropriate.

Section 13.11. No Right Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose.

Section 13.12. Applicability of Governmental Regulations. The covenants, conditions, and restrictions contained herein are separate and distinct from any zoning, building or other law, ordinance, rule or regulation of the City of Fruita or of any governmental authority having jurisdiction over the Property which now or in the future may contain different requirements from or in addition to those contained herein or which may prohibit uses permitted herein or permit use prohibited herein. In the event of any conflict between the provisions hereof and the provisions of any such law, ordinance, rule or regulation, the owner must first comply with all governmental laws, ordinances, rules or regulations and then to the extent possible, the Owner must comply with these covenants, conditions, and restrictions unless such compliance would result in a violation of such

